

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DAVID A. SMILEY,)	
)	
Plaintiff,)	
)	C.A. No. 1:07-005-SLR
v.)	
)	JURY TRIAL DEMANDED
DAIMLER CHRYSLER,)	
)	PUBLIC VERSION
Defendant.)	
)	

**APPENDIX TO DEFENDANT CHRYSLER LLC'S
OPENING BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

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Dated: May 22, 2008
865492v1 / 31959

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CERTIFICATE OF SERVICE

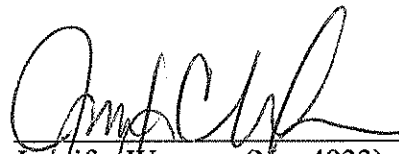
I hereby certify this 22ND day of May, 2008, that a true and correct copy of the foregoing **APPENDIX TO DEFENDANT CHRYSLER LLC'S OPENING BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT (PUBLIC VERSION)** was electronically filed with U.S. District Court District of Delaware via CM/ECF (Official Court Electronic Document Filing System) which will send notification of such filing that the document is available for viewing and downloading via CM/ECF to the following counsel of record:

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WILCOX & FETZER LTD.

In the Matter Of:

Smiley

V.

DaimlerChrysler

C.A. # 1:07-005 SLR

Transcript of:

David A. Smiley

Volume #

April 9, 2008

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

DAVID A. SMILEY,)
) VOLUME 1
Plaintiff,)
)
v.) C.A. No. 1:07-005 SLR
)
DAIMLER CHRYSLER,)
)
Defendant.)

Deposition of DAVID A. SMILEY taken
pursuant to notice at the law offices of Potter Anderson
& Corroon, LLP, 1313 North Market Street, 6th Floor,
Wilmington, Delaware, beginning at 10:15 a.m., on
Wednesday, April 9, 2008, before Kimberly A. Hurley,
Registered Merit Reporter and Notary Public.

APPEARANCES:

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1 DAVID A. SMILEY,
2 the witness herein, having first been
3 duly sworn on oath, was examined and
4 testified as follows:

5 BY MS. WASSON:

6 Q. Mr. Smiley, my name is Jennifer Wasson, and I
7 represent Chrysler in this case, and I'm going to be
8 taking your deposition this morning. Have you ever had a
9 deposition before?

10 A. No, ma'am.

11 Q. There are some ground rules that we normally go
12 over at the very outset just so everybody sort of
13 understands how it's going to go and kind of how this
14 whole process works.

15 The first thing that's important to
16 remember is you're under oath just like you would be in
17 court. Do you understand that?

18 A. Yes, I do.

19 Q. If you don't understand the questions that I'm
20 asking you, tell me, because otherwise I'm going to
21 assume that you understand the question.

22 A. Yes, ma'am.

23 Q. If you realize during the deposition that an
24 answer that you gave me at a prior point was inaccurate

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1 or you want to change it or it's incomplete, let me know
2 and we will go back to that. I will give you a chance to
3 correct it.

4 A. Yes, ma'am.

5 Q. It's important that we give verbal responses
6 for the court reporter because she can't take down --

7 A. Yes, I understand.

8 Q. She can't take down nods or gestures. We both
9 have to make sure that we give verbal answers and we
10 don't try to talk over each other. So I'll try to
11 respect you and I'd like you to do the same for me.

12 A. Consider it done.

13 Q. Is there any reason why you feel that you can't
14 testify today?

15 A. No.

16 Q. Are you taking any kind of medication or
17 anything that would affect your ability --

18 A. No.

19 Q. Nothing that would impair your ability to think
20 clearly?

21 A. No.

22 Q. Let's start with some background information.
23 Can you give me your current address?

24 A. 814 Village Circle, Apartment B, Newark,

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1 Delaware, 19713.

2 Q. Is this a new address for you?

3 A. Yes.

4 Q. How long have you been there?

5 A. I think maybe a little over -- about maybe a
6 month. A little over a month.

7 Q. Is there any particular reason why you moved?

8 A. Well, there was an issue with payment on
9 another bill. So it basically was financial decision to
10 find somewhere else.

11 Q. Do you live with anybody?

12 A. My wife.

13 Q. Anybody else?

14 A. Two children.

15 Q. Just as background, how old are they?

16 A. Ten and six.

17 Q. Tell me a little bit about your education.

18 A. Okay. High school graduate, college graduate,
19 Widener University. And that's pretty much it.

20 Q. Tell me about your college degree.

21 A. Paralegal studies, certificate and a Bachelor's
22 degree. Two certificates and a Bachelor's degree.

23 Q. When you say "certificate," does that mean like
24 an Associate's?

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1 A. Not quite an Associate's. They have I'd like
2 to say like an accelerated program, if you will.
3 Basically, for individuals I guess would be coming into
4 the field that just need the certification that you have
5 completed XYZ amount of classes, that type of thing.

6 Q. When did you graduate from college?

7 A. August 13th of 2004.

8 Q. Were you working at the time?

9 A. Yes.

10 Q. Were you doing night classes?

11 A. Yes.

12 Q. You were working at Chrysler; is that right?

13 A. Yes. At Chrysler prior to this incident
14 16 years.

15 Q. Did you get your paralegal studies
16 certification through Chrysler?

17 A. Okay. I utilized what they call TAP's, Tuition
18 Assistance Program, if that's the question that you're
19 asking me, yes.

20 Q. Without going into too much detail, because I'm
21 not familiar with the TAP's program, can you tell me just
22 a little bit about that?

23 A. Basically, as an hourly employee, you're
24 allotted I think it was \$4,500 per year to utilize as far

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1 as any type classes that you want to take.

2 Q. Your employment history, when were you hired at
3 DaimlerChrysler?

4 A. April 6 of 1989.

5 Q. What were you hired to do?

6 A. I was hired as an assembler.

7 Q. That was working on the line?

8 A. Yes.

9 Q. What kind of duties did you do as an assembler?

10 A. In the beginning I was in the trim shop. So I
11 installed the park brake. What else did I do? I became
12 a pool person after that. My first real job was the park
13 brake, but I was a pool person. So basically I do this
14 job today, tomorrow I would be doing something else.

15 Q. When you say "pool," does that mean like a
16 floater?

17 A. Yes, okay.

18 Q. How long did you stay in the pool or as a
19 floater?

20 A. I think I did that maybe a year and then I did
21 the park brake for a while and then I was bumped off of
22 that. Various other jobs. We had liner install. I try
23 to forget that. Let's see, what else? I did that. I
24 did carpet install. Various.

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1 Q. How long did you stay in any one of these jobs?
2 Did they move you once a year or how did that kind of
3 work? How did you progress through to start doing these
4 different positions?

5 A. To get where I got to where I ended up at, I
6 ended up putting in a transfer. So I was in trim for
7 nine years. I believe it was nine years. After that,
8 put in a transfer and ended up with body shop. To this
9 day I cannot tell you how I got body shop, but that's
10 where they put me.

11 Q. Was body shop a good thing?

12 A. It's mixed blessings. It's mixed.

13 Q. You went from trim for nine years to body shop,
14 and then how long did you stay in body shop?

15 A. Up until my termination date.

16 Q. Within a position do you get additional skills
17 and move up through the ranks in a particular position?

18 A. Basically what happens is -- as an example,
19 before it was over with, I was a tech 1. I need to learn
20 all the jobs on your team. Six jobs on the adjacent
21 sister team, be that and the other side of body shop. So
22 I pretty much did it all. Pretty much did it all. I was
23 a door install, left that, lift gate install, left
24 that -- prior to becoming a tech 1 bidder.

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1 Q. Is the tech 1 the highest position you can
2 obtain?

3 A. As far as a line worker, yes. I mean, you have
4 inspection, but my seniority would not enable me to do
5 that job. If I did get it, I wouldn't have had it long.
6 When I knew it would be something that I could be bumped
7 off of just because of my seniority date, I wouldn't
8 pursue that.

9 Q. Within the context of body shop are you talking
10 about?

11 A. Yes. Actually, trim shop, also. If it was
12 something -- it's sort of like to get your time in, you
13 want to take the worst job that there is. That way, it's
14 some glimmer of hope as far as longevity. You get your
15 time in and then you start looking for something else.
16 In my case, like I said, I ended up becoming a tech 1.

17 Q. How long did it take you to become a tech 1?

18 A. It was a total of -- once I got in the body
19 shop, maybe a year.

20 Q. The most recent position that you held was door
21 fitter; is that right?

22 A. Yes.

23 Q. Tell me about that job.

24 A. Okay. The vehicle would come down the line.

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1 What we would do, you have certain measurements, I can't
2 think of the exact right now, but you would test the
3 front leading edge of the door against the rear edge of
4 the fender; ensure that there was proper space there.
5 You would also -- the door header, make sure -- make sure
6 the door closed -- opened and closed properly, that it
7 was within specifications to make sure the bolts were
8 torqued. I forget what the specification is for that at
9 this moment, but you would do that.

10 MS. WASSON: Can you mark this, please, as
11 Exhibit 1?

12 (Smiley Deposition Exhibit No. 1 was marked
13 for identification.)

14 BY MS. WASSON:

15 Q. Mr. Smiley, I'm going to hand you what's been
16 marked as Exhibit 1. Can you take a look at that for me?

17 A. Okay.

18 Q. Can you identify what this document is?

19 A. Basically, as the vehicle comes down the line,
20 this was basically -- this was the easiest part of my
21 job.

22 Q. Is this a job description for door fitter?

23 A. Job description would be correct, yes.

24 Q. You said this first page is the easiest part of

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1 your job?

2 A. When I say that, like I say, to readjust the
3 doors is required, up, down, forward, aft. Things like
4 that. The bolts, retorque the strikers, checking
5 closing. So yes.

6 Q. The second page, is that also a list of things
7 that you would be responsible for as a door fitter? It
8 says, "Automated Manufacturing Planning System."

9 A. This is door install. This is a door
10 installer. I have had this job, but this was not the
11 last job.

12 Q. This is not your job? The second page does not
13 describe your job?

14 A. Yes. That would be correct.

15 Q. We're looking at the first page.

16 A. Yes.

17 Q. Were there job duties in addition to the ones
18 that you see here that you were responsible for on your
19 job as door fitter?

20 A. Also you do a visual inspection of the unit.
21 You're looking for dings, dents, scratches, paint
22 problems. Let's see what else. Again, hinges, make sure
23 everything is where it's supposed to be. Proper torque,
24 put it into the computer.

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1 Q. Tell me about what you physically had to do to
2 perform these job duties.

3 A. You generally carry -- a little carrier. It
4 came with a hammer, a maul, maybe about five-pound maul
5 or small sledgehammer, if you will. A maul.

6 To do the strikers, you basically had to --
7 it was two bolts. You would break each bolt -- you want
8 it loose. You don't want it to the point that it's going
9 to fall off, but you want it loose. You want to close
10 the door, realign the striker. Think in terms of a V.
11 The striker fits inside just like that.

12 Q. The striker is which part of the door? I'm
13 sorry, I'm not a car gal.

14 A. That's on the V post. You have your B post
15 which is where your glass is. V post is where your front
16 door closes to. The striker would be there and in the
17 case of the Durango, you have a V post, then you have the
18 C post and D post, so on and so forth.

19 Q. Got you. So you're fitting the door into the
20 striker part of the B post?

21 A. What you're using -- the striker is going to
22 give you your up and down and also in and out. So
23 basically you want to loosen the striker, take the door,
24 close the door. This is what's called setting the

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1 striker. You want to make sure your lines are correct.
2 You want to make sure that you have the proper dimensions
3 between the leading edge of the rear door in this case
4 and the rear edge of the front door. Again, it would be
5 the same with the front fender. You would take a
6 measurement off of that. You want to make sure the lines
7 are correct. Again, you go to the header, which is the
8 very top of your door, the part that closes onto the
9 body. You want to make sure all that's right.

10 Q. What do you physically do? Is it a visual --
11 once you close the door, do you visually inspect it?

12 A. It's visual in some cases. It's a
13 case-by-case. In some cases you have to. I'll use the
14 expression pull it. What I mean by "pull it," you're
15 physically moving it where it needs to be. You may have
16 to pull a header back a little bit. You may have to --
17 in some cases the bottom part of the door, you have your
18 beader. You have your -- we had a little wedge of some
19 type of poly type of material. Anyway, you would use
20 that to help move your striker ahead. You had to do all
21 that. It wasn't as simple as opening or closing the
22 door. In some cases you had a good day and other days,
23 when it ran bad, you had a battle with that.

24 Q. How much would you say that you had to lift?

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1 You had to carry the five-pound maul, right?

2 A. Yes. Lifting, depending on what -- I'd say
3 maybe about 15 pounds with all your tools in it.

4 Q. The carrier?

5 A. Yes.

6 Q. And then what about when you were physically
7 doing your job, was there lifting?

8 A. It's not a matter of lifting. There is
9 sometimes a matter of pulling, pushing, and that type of
10 action.

11 Q. Did you have weight-bearing on your arms or
12 your hands when you were doing that?

13 A. In some cases, no. In most cases, no. Some
14 cases you may have had to remove maybe a bottom hinge or
15 so. So sometimes if you could get someone to help you to
16 support that, start your screws in. But it wasn't
17 generally a bunch of lifting, per se.

18 Q. Would it be fair to say that during an average
19 day you're responsible for lifting the 15-pound carrier
20 and maybe doing some occasional other lifting activities,
21 or no? Correct me if I'm wrong because I want to get an
22 understanding of the physical tasks.

23 A. The physical tasks. As far as the lifting,
24 you're almost there. It's not a lot of lifting. Like I

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1 said, it's more finesse work, if you will. Make it look
2 good, so to speak.

3 Q. How about other manual tasks, are you on your
4 feet all day?

5 A. Yes. Then you have to loosen the striker,
6 tighten the striker. You have basically what amounted to
7 a ratchet wrench, if you will. So to do a lot of
8 repetitive type of motions as far as using the ratchet.

9 Q. Involving your hands and your wrists?

10 A. Yes.

11 Q. Any other parts of your arm or parts of your
12 body that your job would require motion and activity
13 from?

14 A. Next spot would be elbow, shoulders. Anything
15 that's attributable to use of the arm.

16 Q. You need to really be able to use both arms in
17 this job?

18 A. It helps, yes. And fingers, too, because a lot
19 of times what your eyes can't see, a lot of times you
20 would have -- to use an example, you feel it, and your
21 hands will tell you more than your eyes will in a lot of
22 cases. But this is after time and doing it so long, that
23 everyone finds their own little way of obtaining the same
24 thing.

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1 Q. You were only on the right side; is that right?

2 A. I had primarily right side. If necessary, I
3 would have to switch off, go to the left, I would do lift
4 gates. I would do hoods occasionally.

5 Q. How long would it take you to finish one door
6 fit for one vehicle?

7 A. It's a case-by-case. Some doors fit better
8 than others. Some come out perfect. Others you have to
9 make fit. So there's no specific -- I believe you were
10 given like I think maybe 60 seconds or whatever the time
11 is allotted per vehicle. In a lot of cases it went
12 further than that because you end up working down the
13 line. Then you have to try to rush back. It depends on
14 the condition of the door and how it was set to the body.

15 Q. Ballpark, how many doors per day?

16 A. Answering in ballpark, possibly 300. It gets
17 old.

18 Q. That's quite a few doors.

19 So that was the most recent position that
20 you held as a regular job with Chrysler?

21 A. Yes.

22 Q. Were you a member of the bargaining unit?

23 A. No, I was not a member of the bargaining unit.

24 Q. The local union represented you just because

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1 you were an hourly employee, but you weren't actually a
2 union member; is that correct?

3 A. I was a union member. Yes. When you say
4 "bargaining unit," I'm thinking contract, you go to
5 Detroit, you're there. I wasn't one of those.

6 Q. I see.

7 A. I held facility instructor, facilitator
8 instructor. I have been an alternate shop steward. I
9 have been an alternate committee man. Each of those were
10 a committee more so as an election as is usually done.

11 Q. I apologize. Let me rephrase that. You were a
12 member of the union?

13 A. Yes.

14 Q. But you weren't a member of the negotiating
15 team that did the bargaining unit contract?

16 A. That would be correct.

17 Q. How long were you a member of the union at
18 Chrysler?

19 A. Sixteen years.

20 Q. You started to tell me about this, but I want
21 to kind of hear more about how involved you were with the
22 union.

23 A. Again, like I said, facilitator instructor.
24 There would be times that they would send me and

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1 others -- last trip I have taken was to St. Louis and
2 that was for a workplace violence type of seminar. I had
3 to go there and soak up their information and come back
4 and give it to our union members, starting with
5 management and down to your hourly.

6 Q. Was that an appointed assignment?

7 A. That was an appointment, yes. Every position I
8 have ever held with Chrysler has been an appointment.

9 Q. You were the facilitator instructor?

10 A. I was a facilitator. I think at the time there
11 was about six of us.

12 Q. It was in that context that you were sent to
13 St. Louis?

14 A. Yes.

15 Q. Then alternate shop steward?

16 A. Yes. Basically, because it was an alternate
17 position, I really had no powers as a steward or as a
18 committee person. However, if there was an issue, I
19 would go -- I would take the necessary information and I
20 would forward it to the shop steward and the committee
21 man, whatever it was for.

22 Q. Did you ever help facilitate grievances on
23 behalf of the union?

24 A. No, ma'am. As far as any administrative-type

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1 duties, I had none.

2 Q. Besides the grievance that was filed in
3 connection with your termination, did you ever file any
4 other grievances?

5 A. It was years ago. I was in trim shop. I
6 believe that was the AC condenser line. I believe that
7 wasn't in my favor, but they ended up taking the job and
8 splitting it in half directly after that. So it was sort
9 of like the grievance that I put in because -- it was a
10 disciplinary thing I believe it was. But it never really
11 amounted to anything. But I put in a grievance because I
12 said it was overwork. And I could say in their actions
13 later on it was proven that it was, in fact, overwork.
14 However, as far as my grievance, it still went against
15 me.

16 Q. So you still got disciplined or pointed?

17 A. It's still in my jacket. I wasn't really
18 disciplined, per se, but it's still in my jacket.

19 Q. Your most recent position, who was your
20 supervisor at Chrysler?

21 A. Shawn -- what's his -- Hutton.

22 Q. Tell me about your pay rate when you were last
23 working as a door fitter.

24 A. I believe it was \$26, \$28.

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1 Q. Do you remember?

2 A. Let's lean toward maybe perhaps \$28, because I
3 knew the contract was over -- I think the contract ended
4 in 2005. So we had I believe it was another raise or so
5 that would get us to the \$30 plateau or where they're at
6 right now.

7 Q. You were terminated in May of '05; is that
8 right?

9 A. May 13th, yes.

10 Q. At that time would it have been \$28 or would it
11 have been --

12 A. I believe at that time it was I want to say
13 \$28. I may be mistaken, but it may be, I believe, \$28.

14 Q. What is your current employment status?

15 A. Unemployed. Basically, yes. Still receiving
16 disability.

17 Q. When you say "disability," do you mean workers'
18 comp. or do you mean --

19 A. Okay, workers' comp.

20 Q. -- Social Security disability?

21 A. I see what you're saying now. But no, it's not
22 Social Security. It's workmen's comp.

23 Q. We will talk about that in just a second.

24 You're currently unemployed. Have you had

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1 any employment, other employment, since you were
2 terminated from Chrysler?

3 A. At one point in '06 there was -- I was a
4 manager at Jackson Hewitt for a tax season. I did some
5 work at a -- a salesperson, a district salesperson, for a
6 furniture company. Let's see what else. And there was a
7 moment that I was -- I hate to say it, but I was at Honda
8 Financial for a moment through a temporary agency, and
9 that was maybe for two months.

10 Q. Let's talk just briefly about each of those
11 positions.

12 The first one you told me about was being a
13 manager at Jackson Hewitt, the tax service.

14 A. Yes.

15 Q. Where was that?

16 A. The office that I had was 56 Carpenter Plaza.
17 I want to say up in Claymont. It was across from the
18 Tri-State Mall.

19 Q. I have a general idea how long a tax season is,
20 but how long did you work?

21 A. I think it was maybe three months.

22 Q. That was in 2005 or 2006 do you think?

23 A. Let's go with 2006.

24 Q. It would have been the 2005 tax season?

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1 A. Yes.

2 Q. How much money did you make there?

3 A. Nothing. I think it was \$9 an hour, something
4 like that. As a matter of fact, it was \$9 an hour.

5 Q. You were the manager of the tax preparers?

6 A. Scary, isn't it?

7 Q. You don't have any tax experience, do you?

8 A. That was my first year with it.

9 Q. Was it a supervisory --

10 A. Yes. Office manager/supervisor. And slash
11 supervisor because I was basically that person, so to
12 speak.

13 Q. Were you thinking that you were going to learn
14 how to be a tax preparer at that time?

15 A. I needed a job and that was basically my
16 motivation for even applying for it. And the supervisor,
17 it came -- I think it was a matter of being in the right
18 place at the right time, because it wasn't -- obviously
19 not an experience thing.

20 Q. I don't think I'd be experienced enough to do
21 it either.

22 But did you ever think that maybe that was
23 something you would want to pursue, to be a tax preparer?

24 A. No.

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1 Q. Why not?

2 A. Well, I don't like taxes. It's a necessary
3 evil, however, but if you're going to do taxes, why not
4 become a CPA and do it that way?

5 Q. Did you have any physical aspect of that job?

6 A. No. Basically, breathe, be there.

7 Q. Did you have to type?

8 A. A little bit. Very little.

9 Q. So sitting, standing?

10 A. Sitting.

11 Q. No manual tasks?

12 A. No manual, no.

13 Q. You stayed there for the tax season. When the
14 tax season was over, that was the end of it?

15 A. That was the end of it.

16 Q. Then the sales at the furniture company?

17 A. There for about two months.

18 Q. Which company?

19 A. Furniture Direct I believe it was, but it was
20 right in Newark. Hourly rate there was -- I think it
21 was -- it may have been -- I think it was another \$8,
22 \$9 there, also.

23 Q. By the way, how many hours a week did you work
24 at the tax service?

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1 A. That varied. There were times that I actually
2 did a 40. There were times that, if an individual didn't
3 show, I would have to cover. So there was no
4 specified -- no 40 hours per. It wasn't those type of
5 deals.

6 Q. So ballpark was it more like part-time or
7 full-time?

8 A. Full-time or with part-time hours, if you will.
9 Not to be difficult. There were days that I could do it
10 in less than -- it depends on what was going on. If I
11 had other individuals coming in, did I have clients
12 coming in, who was supposed to show, who didn't show,
13 things of that nature. A lot of it was dictated upon
14 what was going on in the office at the time.

15 Q. I hate to keep beating you up on this, but give
16 me an average, average week, how many hours would you
17 work?

18 A. Let's say 30.

19 Q. Furniture Direct, how many hours would you work
20 average week?

21 A. That was -- I think we did 40 there.

22 Q. What kind of duties did you have there?

23 A. Salesman.

24 Q. What kind of physical tasks went along with

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1 that job?

2 A. None.

3 Q. Just kind of standing, walking?

4 A. Be there, breathe.

5 Q. Why did you leave that job?

6 A. Because an opportunity -- I had gotten a call
7 that might be able to get to Honda. I accepted it. And
8 that's why I left.

9 Q. So that brings us to Honda. Tell me about
10 Honda.

11 A. Personal feelings aside, let's see. It was
12 basically I was in loss mitigation. Basically my job was
13 if there was a repo, set up repos, set up -- once the car
14 was recovered, contact the individual, let them know
15 that, A, their car is, in fact, impounded. Dealing with
16 basically the repo agents and various garages where they
17 would store these vehicles, ascertain what the amount is
18 owed on it as far as storage and vehicles such as that.

19 Let's see what else. That was pretty much
20 it.

21 Q. This was an office job?

22 A. Yes.

23 Q. How long did you work there?

24 A. I think that was another two months.

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1 Q. How much did you get paid there?

2 A. That was -- I believe that was \$12 an hour.

3 Q. Full-time, part-time?

4 A. Full-time. I wasn't an employee, but through a
5 temporary agency.

6 Q. We will talk a little bit more in a second, but
7 why did you decide to leave Honda?

8 A. Actually, the decision was made for me. I
9 had -- I think it was something to do with this. It was
10 something. I needed to be somewhere and they -- I guess
11 because I had just started, they had a thing about
12 absenteeism, and I understand that. As a temp., there
13 was things that I still needed to do. Since I'm not
14 actually a full-time employee under Honda, I still have
15 other interests that I have to take care of, if you will.
16 And it came to a point that they didn't want to continue
17 with my employment there.

18 Q. It was more of an absence problem or a
19 scheduling --

20 A. Scheduling would be more, yes.

21 Q. When did you work at Honda?

22 A. That was in '07 again. It was there, I
23 believe, the summer, maybe the spring. Somewhere in
24 there. Not really exactly sure of the specific date.

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1 Q. Just to backtrack for a second, when did you
2 work at the furniture company?

3 A. That was during the late winter, early spring I
4 believe it was.

5 Q. Of which year?

6 A. Of '07. Short of having my resume right here,
7 I'm not really exactly sure of the dates.

8 Q. That's fine.

9 The temp. agency that you referred to, was
10 this the only job that you got through the temp. agency?

11 A. That's correct.

12 Q. The Honda job?

13 A. Yes.

14 Q. When did you sign on with the temp. agency?

15 A. Again, '07. Yeah, it was '07. '07. Let's go
16 with '07, because, like I said, it was only like two
17 months or so.

18 Q. So spring maybe?

19 A. We will go with spring because it was still
20 warm out, so yes.

21 Q. Which temp. agency was it?

22 A. Bernard Personnel.

23 Q. You said this was the only job that you got
24 through them, the one with Honda?

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1 A. Yes.

2 Q. Are you still sort of signed on with that temp.
3 agency?

4 A. They have never called me, nor have I called
5 them, so that's pretty much where we're at.

6 Q. How come you didn't keep pursuing jobs through
7 the temp. agency?

8 A. Well, it had taken a few weeks before even the
9 Honda job had come up. Since then I had heard nothing
10 else from them. That's pretty much it. It just wasn't
11 quite working for me, if you will. And I'd rather have
12 something that I know is mine as opposed to, okay, you're
13 here, there's no benefits involved with the temp. agency.
14 That would be about it.

15 Q. Let's talk about other jobs that you applied
16 for. Did you apply for any other jobs besides the ones
17 that you obtained?

18 A. Yes. I saw Career Builder. A lot of more jobs
19 than I could even probably sit here and recite to you.

20 Q. Tell me about the ones that you remember.

21 A. Let's see. There was document scanner, there
22 was another one that you basically proofreading, there
23 was any type of manager. A lot of it entry-level-type
24 management trainee. A few paralegal jobs. That's pretty

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1 much it. Manufacturing, but none of that -- the job
2 descriptions on some of those -- I say "manufacturing,"
3 but I still couldn't tell you exactly what they did. It
4 was basically on Career Builder, I'm clicking, just
5 pretty much clicking.

6 Q. Downloading your resume to that company and
7 waiting to see --

8 A. In most cases, I'd say 99 percent of the time,
9 you never hear anything else. But as far as covering
10 different avenues, you could get more jobs, at least
11 apply for more jobs than physically door to door to door
12 to door. So that was basically what it was.

13 Q. The manufacturing jobs, do you remember which
14 companies those were for?

15 A. I think one was -- one was with Chrysler.
16 There was a supervisory thing there. It was a couple
17 years back. The job description sounded somewhat
18 familiar.

19 Q. You don't remember what it was, though?

20 A. Yes. It was supervisor. I'm not sure if -- I
21 don't think it was paint department. It would probably
22 be somewhere in trim, perhaps chassis. I think they may
23 have had one for body.

24 Q. When did you apply for that one, approximately?

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1 A. I cannot give you an approximate date.

2 Q. You don't remember?

3 A. No.

4 Q. So sometime between '05 -- or summer of '05?

5 A. Okay. We can say that. That would be fine.

6 '05 to the present. Somewhere in that area. It was one
7 of those type of deals I never heard anything from them.

8 Q. Was it recently?

9 A. No. The most recent that I had applied for was
10 at Mopar, and that was within this last -- within the
11 last month or so. That was at Mopar. Basically a
12 pick-and-pack position. One time I did a slight stint
13 there. That's basically what the job entailed.

14 Q. When did you do your small stint there?

15 A. That was back in '98, '99. I think it was --
16 instead of going on change-over when the plant closed, we
17 went over there. Basically all it is is they give you a
18 sheet of paper with numbers on it which there are
19 corresponding whatever parts there are, just small parts.
20 You get a little bin and you're picking parts for various
21 dealers around the country.

22 Q. So you have to grab the part off the shelf?

23 A. Anything from hoses to filters to gaskets.

24 Nothing major. You're not lifting engine blocks or

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1 anything like that, no.

2 Q. You still have to be able to lift items, but
3 they're not heavy items?

4 A. Yes. I think -- whatever the weight of the --
5 maybe a hose, it might be what, two pounds, something
6 like that. In some cases. In some cases we are
7 talking -- you could basically build a vehicle in there
8 short of an engine. You could pretty much build a
9 vehicle in that building.

10 Q. It's called pick and pack?

11 A. We call it pick and pack. What do they call
12 it? I forget the nomenclature that they use. But
13 basically that's what you're doing. You're just picking
14 parts. If a dealer wants, say, three muffler clamps,
15 it's going to be on your printout. You have a
16 corresponding number with aisle and whatever may be a
17 column number, if you will. You take your loader; you go
18 get that. In some cases I had to use a stand-up loader
19 just to bring the parts down so I could get what I needed
20 and put it back. The whole thing is like that.

21 Q. You applied for that job within the last month,
22 but you haven't heard --

23 A. I have heard. That was a no. They needed
24 someone with more experience than I.

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1 Q. Any other manufacturing jobs that you can
2 remember?

3 A. No.

4 Q. What about paralegal jobs?

5 A. Basically, there was a lot in Philadelphia.
6 That would vary. It was never an entry-level-type
7 paralegal. I looked at copyright, patent, intellectual
8 property, if you will. What else? Basically a lot of
9 them were just general paralegal-type litigation, be it
10 personal injury or stuff like that.

11 Q. Did you interview for any of those?

12 A. No, ma'am. Never heard anything from them.

13 Q. Were those through Career Builder, too?

14 A. Yes.

15 Q. Ever make any other attempts to find a
16 paralegal job outside of Career Builder, like through
17 your temp. agency or anything like that?

18 A. That was what I primarily signed on for that,
19 and since I ended up with Honda, I kind of figured that
20 that isn't the place that I needed to be looking.

21 Q. Any other attempts at all to do door to door,
22 as you say?

23 A. No door to door, because basically, if you
24 don't know anyone, it's kind of a hard field to get into.

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1 And then there's -- even though I have the degree, I
2 don't have the experience. So it's a catch 22. You
3 can't if you don't have the experience, or if I had the
4 experience, you don't have the degree. It flip-flops.

5 Q. Are you continuing to apply for jobs --

6 A. Yes.

7 Q. -- at this point?

8 A. Yes.

9 Q. What kind of jobs are you still looking for?
10 What kind of industries do you want to get in?

11 A. I'm still looking at legal since I figure I
12 have a little bit of paperwork for that. So I figured if
13 anything, it's a leg up. I still like the automotive
14 industry, but that's a dying horse, if you will. Short
15 of being a vehicle salesman, and that's nothing that I
16 would be interested in. There's certain aspects in
17 Chrysler or pretty much any type of manufacturing, that's
18 sort of where my heart is. I still like that type of
19 thing.

20 Q. Any specific position within manufacturing that
21 you would prefer?

22 A. At this venue, because of my arm, I would be
23 looking for some type of management. Manager position or
24 something like that.

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1 Q. Would you consider ever going back to a
2 line-level job?

3 A. Depending on what that would do. What's the
4 repetitive type of actions involved in it because of the
5 arm. I know that's what got me into it. If I can avoid
6 it, that's what I will do.

7 Q. You had told me before that you were receiving
8 some workers' compensation benefits?

9 A. Yes.

10 Q. Tell me how much you receive per week.

11 A. \$361.37.

12 Q. How long have you received that amount?

13 A. From 2005.

14 Q. Did you receive any amounts before that time?

15 A. I believe with those times that I was -- the
16 times I was off, yes. Probably about the same amount
17 because there's never really been anything higher than
18 the amount that I have just quoted you.

19 Q. The times that you have been off, do you mean
20 times that you were out of work on leave at Chrysler?

21 A. Well, the times I was on -- my doctor would
22 pull me out and then just on those times and those times
23 alone.

24 Q. Let me just make sure I'm clear on this. You

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1 would get workers' compensation benefits when your doctor
2 would pull you out of work?

3 A. When I was off. That would be the only time I
4 would receive it. Other than that, it would be your
5 regular pay, which is considerably more than \$361.

6 Q. You would be approved for workers' comp. -- can
7 I use "on leave"? Is that an appropriate term for you?

8 A. No. When I was on sick leave. If we worded it
9 that way. Because leave could be vacation or whatever or
10 Family Medical Leave Act. Something like that. That's
11 why I choose not to use "leave." But when I was
12 diagnosed and my doctor had pulled me out, those were the
13 times that I received workers' compensation.

14 Q. Then you went back to work for your regular
15 pay?

16 A. Yes.

17 Q. Then you were out of work for a period before
18 your termination; is that correct?

19 A. Yes. In fact, on the day of my termination, I
20 was out then. I had come back because I had received
21 information from Chrysler stating that I had missed an
22 appointment. I didn't know about it. My workmen's comp.
23 attorney at the time didn't know about it. I responded
24 to the letter. I brought everything in and that day I

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1 was terminated.

2 Q. We will talk about that.

3 A. I don't doubt that.

4 Q. Just so I'm 100 percent perfectly clear, when
5 you were out of work at that time prior to when you were
6 terminated, you were receiving the workers' comp.
7 benefits?

8 A. It was workmen's comp., one of the two. At
9 that time David Cline was my attorney.

10 Q. Then after you were terminated, did you
11 continue to receive the workers' comp.?

12 A. Yes.

13 Q. You continued right through to today?

14 A. Yes. I am receiving workmen's comp. at this
15 point.

16 Q. Do you know what your status is as far as have
17 you been deemed to have a permanent injury? Are you on a
18 temporary status?

19 A. Right now I'm waiting. I have another
20 appointment, I think it is next month, for another -- I
21 just had a surgical consult. I believe we're going to go
22 through with the surgery. But right now they have -- on
23 my checks -- they have "temporary" on my check stubs. So
24 that's what I will have to go with at this point.

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1 Q. Do you have any idea how long your benefits
2 will continue?

3 A. No, I don't. That aspect of it I have no idea.

4 Q. I think I already know the answer to this, but
5 are you receiving any workers' comp. benefits from any
6 other employers?

7 A. No, ma'am.

8 Q. How about unemployment benefits?

9 A. Never.

10 Q. One quick question again about workers' comp.
11 Do you know the status of your injury? Has it been
12 characterized as partial or total?

13 A. I think my workmen's comp. attorney would be
14 better suited to answer that than I because I'm not
15 exactly sure what wording and I'm sure there's aspects he
16 knows that I'm not aware of.

17 Q. So you're not quite sure at this time?

18 A. I'm not quite sure.

19 Q. What about Social Security disability benefits?

20 A. No. Don't receive that.

21 Q. Did you ever apply?

22 A. No. I didn't know I was able. I have never
23 even -- like I said, I never tried it. I never thought
24 you could do it. Never really thought of it.

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1 Q. Any further education or degrees since leaving
2 Chrysler?

3 A. Not yet, but that's in the future. Go back and
4 get my Master's or if I can knock this LSAT out.

5 Q. So you'd either like to get your Master's
6 degree or go further in law?

7 A. Yeah. It will still be in law even with my
8 Master's. It will probably be criminal justice, only
9 because there's a familiarity with that area.

10 Q. Do you have any concrete plans as for when you
11 would like to do that?

12 A. Like to get it done -- gosh. As soon as I get
13 this -- the sooner I can get this all out of the way,
14 then I can focus because that was another reason I was
15 doing the LSAT. I was focusing on trying to get the job,
16 and, as you already know, you need 110 percent
17 concentration and I was not able to afford it that.

18 Q. You think this year maybe?

19 A. As soon as the smoke clears. That's when I'm
20 going to try. That's where it is right now.

21 Q. Tell me about your hobbies.

22 A. Well, can't really perform it like I used to.
23 I used to be in working on my vehicles. Now it's
24 basically if I have to, I will do it now, because of the

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1 torquing actions and stuff because I have a 1985 Dodge
2 Ram truck, modified. Once upon a time. But like I said,
3 right now it's basically transportation.

4 Q. When you say you were working on your cars,
5 what kind of work did you do?

6 A. Basically engine stuff. I would do tune-ups,
7 different type of component changes, intake, stuff like
8 that, for cams, carbs, stuff like that.

9 Q. Was it more like routine maintenance or were
10 you kind of tricking it out?

11 A. Now it would be routine maintenance. Back when
12 it was truly a hobby, tricking it out, as you say. It's
13 a sleeper. On paper it's a 13-second truck.

14 Q. That means what, speed? I'm not a car gal.

15 A. Yes.

16 Q. Routine maintenance. Prior to that when were
17 you doing the mods?

18 A. Prior to 2005. Actually, before the injury I
19 would be out doing -- basically doing little stuff to it.
20 It's been a project. I have been working on it for years
21 now a little bit at a time.

22 Q. When you say "before the injury," what time
23 period would you characterize that as?

24 A. It could go -- actually anytime prior to that.

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1 Usually during the summer. So that happened in May of
2 2005. We could go back to, let's say, maybe 2003 in the
3 summer. About the summer. Since I don't have a garage
4 and a lot of the things that I was doing, I was doing
5 outside. Once you're exposed like that...

6 Q. Let me make sure I understand you. You said
7 that you were doing the mods prior to 2005, but at one
8 point you said prior to your injury.

9 A. Yes, prior to my injury. My injury occurred
10 somewhere in September/October of '04. So that's why I
11 said back in 2003 when I first really got the truck and
12 started doing different things to it.

13 Q. Any other hobbies?

14 A. No, ma'am. Not now.

15 Q. Do you take care of your kids?

16 A. In which aspect? Am I raising them? Yes,
17 they're with me.

18 Q. Do you play with them? Do you --

19 A. Since they're girls, I can't toss them. If
20 they were my nephew, roughhouse with them. I'm sort of
21 limited on that. My arm -- they're my children. You
22 take whatever. You hug them, you pick them up at times.
23 The left arm still works fine.

24 Q. How about household chores?

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1 A. Cook, clean. I do it all.

2 Q. Your wife must love you.

3 A. She's kind of tired of me at this point, but we
4 won't go into that.

5 Q. How about driving, can you drive okay?

6 A. Yes, I can drive.

7 Q. Walking?

8 A. Yes.

9 Q. Standing?

10 A. Yes.

11 Q. Bathing?

12 A. Yes.

13 Q. Dress yourself? Can you dress yourself?

14 A. Yeah, I can still do that.

15 Q. Twisting?

16 A. Like Twister? Yes, I can twist. My hips are
17 fine.

18 Q. Any problems caring for yourself?

19 A. No. No. I'm fully capable of taking care of
20 myself.

21 Q. Your case is about a disability.

22 A. Yes.

23 Q. Can you tell me about your understanding of
24 your disability?

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1 A. All I know is my right elbow, I hurt it on the
2 job and it was swollen for a number of years. Swelling
3 has finally gone down. I'm still going to therapy for
4 that. Pretty much it.

5 Q. You told me that you sustained that injury in
6 September '04. Is that right?

7 A. Somewhere in '04, yes. September/October '04.

8 Q. Would you say that that was when you first
9 became disabled?

10 A. Well, in the beginning I was doing therapy and
11 doing the job. So I was doing them both. And my doctor
12 was, you need to leave it alone, but at the same time my
13 family has to eat, so I had to do what I had to do.

14 Q. When would you say you first became disabled?

15 A. Well, the day that that happened, I think from
16 there, because that was the first incident of ever having
17 a problem with my right elbow. So we could use that day.

18 Q. It's your right elbow?

19 A. Yes.

20 Q. And it was hurt on the job?

21 A. Yes.

22 Q. What happened?

23 A. In the hole -- and when I say "the hole," if
24 you remember, we were speaking about you have -- let's

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1 say you have 30 seconds on the vehicle. Sometimes that
2 vehicle might take considerably longer than 30 seconds.
3 Meanwhile, the line is still coming. So after you finish
4 that, you have to type in the vehicle number, were there
5 any other defects, what you did to the vehicle, and then
6 go back and try and make this car.

7 Now, what had happened in my case, it was
8 an incident. I was probably coming out of the hole.
9 There are times that the line stops. There's nothing --
10 it stops. Someone up so many feet ahead of you may stop
11 it. Someone behind you may stop it. Someone on the
12 other side of you could stop it. There's no red light.
13 It stops. Going in to do a vehicle, rear door, I hit my
14 elbow on the can. The can is in the rear door where the
15 door handle is. It sticks out, and that's where your
16 lamp mechanism is.

17 Q. In the inside of the door?

18 A. In the inside the structure of the door itself
19 on the inside of the door. Going in and that's when I
20 hit it.

21 I went to medical. We got it documented.
22 That's why we're here.

23 Q. Was the line moving or the line stopped?

24 A. The line moving and it stopped. It stopped as

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1 I was going in. So we sort of -- the door and I sort of
2 met.

3 Q. Were you given a diagnosis for the elbow
4 injury?

5 A. My doctor -- it's in his notes. I can't verse
6 the technical terms that he put out. They're inside
7 Dr. Bandera's notes.

8 Q. Dr. Bandera's records would have that?

9 A. Yes. He's the only doctor that I have treated
10 with with this situation since it has occurred.

11 Q. Is he a family doctor? Is he a specialist?

12 A. I don't know what you would consider him. I'm
13 not really sure. I guess you could say specialist
14 because I know he does -- he has like a rehab type of
15 center there. He does -- you have people in there with
16 ankles, arms, legs, what have you, type of therapy.

17 Q. Do you remember when he diagnosed you?

18 A. I couldn't give you an exact date, no.

19 Q. Are you still being treated?

20 A. Yes.

21 Q. Tell me about your treatments.

22 A. Basically, heat, ice, stim, and we do
23 manipulative-type exercises with it. I have this one
24 thing that I have to squeeze and whirlpool for it, heated

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1 whirlpool for it. Like I say, stim is basically put your
2 electrodes on it and he wraps it in an icepack and then
3 turns the current on.

4 Q. Electric current?

5 A. Yes. The rack.

6 Q. Does that help? I have never heard of that.

7 A. A lot of times, if an individual, say, were in
8 an auto accident, a lot of times, for muscle-type
9 injuries and things like that, they will use electrical
10 stimulus. Basically it agitates the muscle, if you will.

11 Q. How often do you go to treatment?

12 A. When I can -- I was going -- he had me going
13 three times a week.

14 Q. Do you still do that?

15 A. Now we pretty much held back on that because
16 we're waiting to see what's going on with this other
17 doctor's evaluation of my arm.

18 Q. Dr. Bandera had you going three times a week to
19 do the exercises and the whirlpool and the electrode
20 procedure?

21 A. Uh-huh.

22 Q. How long were you doing the three-times-a-week
23 course of treatment?

24 A. That was for a few months. A few months.

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1 Q. When you were still working? Give me some
2 context for time.

3 A. At the time when I was going, it was two times
4 a week when I was still working. This is in the
5 beginning, in '04. In fact, I would have to leave
6 Chrysler to go to his facility because he closes like --
7 I think it was like at 4 o'clock. He's usually out of
8 the office around 4 o'clock. So there were times they
9 were saying that I get paid, I never seen it, but I would
10 go like maybe two times a week there. The swelling
11 hadn't went down, there was no real change, so we
12 intensified the visits, if you will.

13 Q. Do you remember when you started three times a
14 week?

15 A. Couldn't give you a concrete date, but it would
16 be -- it would even for -- we did it sometimes in '05.
17 We did it in '04. We did it in '06. Intermittently to
18 the current date.

19 Q. When you say "intermittently," do you mean it
20 started in '04 and you did it sometimes in '04 and then
21 you ratcheted it up or down?

22 A. Not so much my call. Not so much my call.
23 There would be times he would say, give it a few months
24 and give me a call back and you come in and we will do an

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1 evaluation and we will do it that way. Again, those
2 things would be in his notes.

3 Q. Throughout 2004, 2005, 2006, all the way to the
4 present, it was kind of a course where sometimes it was
5 two times a week if you were doing okay. If it started
6 to kind of decline, it would be more like three times a
7 week?

8 A. Well, we would go from three down to two
9 because basically we didn't see the true improvement that
10 we both felt should have been there.

11 Q. Now are you doing two times a week?

12 A. Right now I'm waiting on -- I'm supposed to be
13 doing three. Can't afford to do three. From Newark
14 coming back and forth here, I really can't afford to make
15 those trips. If I could, I would.

16 Q. Are you doing any --

17 A. I do like basically like a home thing. I do a
18 lot of stretching and I put a little ice on it.

19 Q. How is that going?

20 A. The situation is still the same. The only
21 difference now is it isn't swollen.

22 Q. You said you were waiting for an evaluation by
23 another doctor?

24 A. Yes.

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1 Q. Tell me about that.

2 A. That's Surgical Consultants. His name is
3 David Sowa.

4 Q. S-o-a?

5 A. S-o-w-a.

6 Q. He's the surgeon?

7 A. Yes. We're going to wait and see what his
8 evaluation is. He gave me another shot in my elbow.
9 It's still the same. Pretty much the same.

10 Q. Have you been treating with Dr. Sowa?

11 A. I had one visit with him. Like I say, we're
12 awaiting the next visit next month.

13 Q. You had one visit. You got the shot?

14 A. Yes.

15 Q. The shot didn't help very much?

16 A. No. Maybe a couple days and then you get the
17 same burning. The same thing.

18 Q. Now you're looking at surgery?

19 A. Yes. Because the idea was years ago I had one
20 incident that I think I might have jumped into it too
21 soon. I opted to treat it conservatively this time.
22 Aggressive, but still conservative at the same time, no
23 surgery. Three years after the fact the problem is still
24 there. So I caught myself giving it enough time this

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1 time to make a better evaluation of it. So now I'm at
2 the point now if surgery will correct it, that's what I
3 will do.

4 Q. The prior surgery that you had, was that an arm
5 surgery?

6 A. No. That was my foot. Totally unrelated to
7 Chrysler.

8 Q. Do you take any medication?

9 A. I get prescriptions, but what I do, like I
10 said, again, it's an affordability issue, since I don't
11 have insurance. Basically over-the-counter Tylenol.

12 Q. But you've been prescribed some medication?

13 A. Yes. I think it was a Percocet thing and I was
14 doing the Lidoderm patches and things like that.

15 Q. But you're not taking that now?

16 A. Can't afford it right now. No.

17 Q. How often do you take the over-the-counter
18 Tylenol?

19 A. When it gets -- because I'm not a fan of
20 pharmaceuticals. When it gets to the point it's really
21 being a pain, then I will take it. Say three, four times
22 a day, I can't sit here and tell you that, no. There are
23 some days is better than others. Some days, this is
24 enough to aggravate it. And other days I could do other

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1 things.

2 Q. What do you think, a couple times a week? Give
3 me a ballpark again.

4 A. I could say a couple. I'd have to say a few.
5 A few times a week.

6 Q. Can you give me a number of times, let's say a
7 seven-day period?

8 A. It depends because some days, some weeks it
9 feels better than others. I could say the whole thing --
10 I don't like pharmaceuticals from the go. If I don't
11 have to take an aspirin, I'm not going to take an
12 aspirin. When it gets to the point that it's really
13 painning me, if you will, then I will take one. Goes to,
14 oh, I take five, six, seven, I can't do that for you.

15 Q. We're going to leave it at a few.

16 A. A few.

17 Q. Tell me about how your injury has affected your
18 life.

19 A. Well, from going from being gainfully employed
20 to the opposite, from there. Financially, obviously.
21 Again, it's taken away -- I can't do what -- like I said,
22 again, with the girls, I'm learning to use the left arm
23 and the hand a lot more so. I'm becoming more
24 ambidextrous because I have to. That would be another

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1 way that is -- that's it. Because I basically had some
2 type of manual-type labor I have done. Prior to Chrysler
3 I was an ironworker. I have always worked with my hands.
4 When I was in the Navy, I worked with my hands. It's
5 caused more of a readjustment, if you will, in the way
6 that I do things and even down to the things that I
7 pursue.

8 Q. We may have tread this ground before, but when
9 did your injury begin to affect these activities?

10 A. That would go back to September/October of '04
11 when it occurred.

12 Q. Has it gotten worse since you stopped working
13 for Chrysler?

14 A. I wouldn't say -- I wouldn't say it's gotten
15 worse, but I can't say -- like I said, the swelling,
16 that's the only aspect that's gotten better.

17 Q. Let's go back to September/October of '04 when
18 you sustained the injury on the job.

19 A. Okay.

20 Q. What happened after you sustained your injury?

21 A. I went to medical; had it documented. Medical
22 iced it, put me back in the game.

23 Q. How long did you keep working with the elbow
24 injury?

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1 A. I worked up until -- intermittent times that my
2 physician has pulled me out on workmen's comp., I worked
3 till my termination. Back and forth up until my
4 termination.

5 Q. Let's talk about the first time that your
6 physician pulled you out, if you can remember. So the
7 injury occurred and then when was the first time that you
8 were out of work for this injury?

9 A. I still tried to work through it, because I
10 remember like it -- I was working and doing therapy. So
11 again, I'd have to refer you to his notes as a more
12 accurate portrayal of that time frame.

13 Q. Do you remember going out in March of -- March
14 of '04, that was before your injury. So you didn't take
15 any time off work for --

16 A. Perhaps it was '03, then, that the injury
17 occurred. It may have been '03, then.

18 Q. Let's see. I have a note here that you were
19 out for a small period in March of '04, but that could be
20 mistaken.

21 A. That might have been -- let's see, what was
22 that for? I don't know. I don't remember exactly what
23 it's for. If I was out, I'm sure there's documentation
24 somewhere to substantiate whatever that is.

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1 Q. Let me show you a document, then.

2 MS. WASSON: Can I have this marked as
3 Exhibit 2, please?

4 (Smiley Deposition Exhibit No. 2 was marked
5 for identification.)

6 BY MS. WASSON:

7 Q. Mr. Smiley, could you just take a look at this
8 document for me, please?

9 A. Uh-huh. Okay.

10 Q. Do you recognize this?

11 A. Let's see. For '04, couldn't exactly tell you
12 what it looks like. They wanted to do an evaluation from
13 the medical department.

14 Q. Do you think that you sustained your injury
15 before this time?

16 A. It very well could have occurred. Very well
17 could have. Again, I could say that September/October
18 could, in fact, be '03.

19 Q. '03?

20 A. Yes. Like I said, short of having everything
21 here right in front of me and having to admit to it, I
22 can't do that.

23 Q. Let's assume just for now, and I'll go back and
24 check in the file and see if we can firm up the date, but

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1 let's assume for now it's '03, September or October of
2 '03. Do you remember taking any brief leaves in the
3 spring of '04 or any time that your doctor put you out of
4 work in the spring of '04?

5 A. If he did, there is a note somewhere stating
6 that's what he did. Let's see. There was one time, and
7 again, this was unrelated, again with my foot, that could
8 have been around that same time because I was out for
9 that. Obviously I walk all day. That's the only other
10 thing I can think of sitting right here.

11 So I can't rightfully say if this was
12 attributed to my foot or if this is attributed to my arm.

13 Q. Do you remember early on when you sustained the
14 injury, did you do anything to sort of modify your job
15 duties or make it easier for you to do your job?

16 A. I got a lighter hammer.

17 Q. You did?

18 A. Yes, I did. That's all I did. I didn't use
19 the regulation hammer that they issued, but we did have
20 another one and I tried using that.

21 Q. Do you remember anybody at Chrysler objecting
22 to you using the lighter hammer?

23 A. As long as the job was being done, there was no
24 objections that I can think of at this point. I guess it

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1 was a little more time-consuming because you have to
2 loosen it. You're going from something five pounds,
3 you're using the weight of the hammer as opposed to now
4 you have a lighter hammer. So it's more strikes. You
5 have to loosen whatever object it is up a little bit more
6 because it's not going to have the same power as a
7 regular hammer would. But other than that, none that I
8 can think of at this point.

9 Q. Besides maybe loosening it up a little bit more
10 and maybe taking just a little bit longer to do each car,
11 was there anything else? Or did that modification,
12 getting the lighter hammer, did that enable you to do
13 everything you needed to do on your job?

14 A. As far as that aspect, yes. As far as hitting
15 whatever, the striker or whatever I had, driving a hinge
16 forward, I could still do that. Like I said, I just have
17 to do it a little harder and a little more often, but
18 other than that...

19 Q. Did you use that lighter hammer for the
20 duration of your time as the right door fitter?

21 A. No, because at the time of the injury I was
22 using a regular hammer. A little ways after that and,
23 like I said, at the time it was still swollen. So that's
24 when I was like, okay, let me see if I can do something.

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1 Let me try something else. That was basically -- it was
2 a shot in the dark. It seemed like it worked. That's
3 what I did.

4 Q. After you started using that lighter hammer,
5 did you continue using that for the rest of the time you
6 spent as door fitter?

7 A. Yes.

8 Q. Do you remember approximately when you decided
9 to switch to the lighter hammer?

10 A. That I cannot tell you.

11 Q. Do you think it was a couple months after the
12 injury?

13 A. I don't know.

14 Q. Couple days?

15 A. I don't know. I know it wasn't a couple days.
16 That I do remember. It wasn't a couple days.

17 Q. It looks like, and I will get some
18 documentation if I can find some in the file, but it
19 looks like you took a leave or you went out of work in
20 July of 2004.

21 A. Okay.

22 Q. You were on leave for a period of time and then
23 received this letter while you were on leave. Do you
24 remember that at all?

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1 A. Again, like I said, just looking at it, there's
2 nothing on here to indicate exactly what I was out for.
3 So I can't truthfully answer that because I don't know
4 what it was for.

5 Q. That's fair.

6 This letter talks about coming in for an
7 evaluation by plant medical?

8 A. Uh-huh.

9 Q. What would you do in response to a letter like
10 this?

11 A. Come in.

12 Q. Under the normal Chrysler procedure, was there
13 anything that you had to do besides come in to plant
14 medical?

15 A. Okay. In this particular instance, like
16 they're saying submit such evidence as directed, okay.
17 So it would be whatever medical documentation you had.
18 Just going by what this says right there.

19 Q. Do you remember bringing in any medical
20 documentation prior to this last incident regarding your
21 termination?

22 A. I brought that in, too, also. Yes, I probably
23 submitted either a copy or -- depends on what I did with
24 the original note. But they would have -- if this

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1 happened in 11/04, it's safe to assume that I gave them
2 whatever it was that they wanted.

3 Q. Do you know under Chrysler's procedures how
4 employees are typically notified about their visits to
5 plant medical?

6 A. Well, it's been my experience that it's through
7 mail.

8 Q. Through a letter?

9 A. Through a letter.

10 Q. Do you see the signature at the bottom of this
11 letter here?

12 A. Uh-huh.

13 Q. This is Dawn Ford?

14 A. Uh-huh.

15 Q. Did you know her at the time that this letter
16 was written?

17 A. Not personally. I knew of her, as I'm sure
18 she's known of me.

19 Q. Do you remember ever talking to her in
20 connection with this visit?

21 A. I can't remember, but, again, they have never
22 had -- in fact, Dawn was the one individual that had a
23 problem with my note. Prior to this I never had any
24 problem with any notes, any copy of notes that I brought.

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1 Never had problems.

2 Q. So at this time period, whenever you had to
3 come in, which it looks like November 3rd, 2004, you
4 don't remember any kind of conversations with Dawn or any
5 kind of interactions with this particular Dawn Ford, this
6 person?

7 A. No. This is the only Dawn Ford in there.

8 Q. You don't remember anything with regard to this
9 visit with her?

10 A. I don't remember right offhand, no, ma'am.
11 Again, because it doesn't exactly say what I was there
12 for short of bringing documentation and evaluation by the
13 plant physician.

14 MS. WASSON: I'd like to mark this as
15 Exhibit 3, please.

16 (Smiley Deposition Exhibit No. 3 was marked
17 for identification.)

18 BY MS. WASSON:

19 Q. Mr. Smiley, have a look at Exhibit 3.

20 A. Okay. From my doctor saying I'm having therapy
21 three times. The DX code still the same. Diagnosis
22 code, 726.32. Okay. So that would be, I guess, this.

23 Q. So it looks like this would be your
24 substantiation that you brought in in response to this

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1 letter?

2 A. May have actually been one of them, yes.

3 Q. Do you remember bringing this one? I know it's
4 been a long time ago.

5 A. I don't know if I brought it in or perhaps
6 maybe they got it from him. Obviously they have it. I'm
7 not exactly sure how, but they have it. It's around the
8 same time. Seems like it fits in with everything that
9 they would like to have.

10 Q. Do you remember coming in in November of '04
11 when you were previously out of work and you were
12 summoned to come in to plant medical? You came in;
13 apparently you brought your documentation.

14 A. Okay.

15 Q. Do you remember seeing the doctor at that point
16 in time?

17 A. I guess if I came in that day, I saw the doctor
18 that day. The only day that I hadn't seen the doctor
19 would be the May 13th incident. That was the only time
20 that I did not see a doctor when I was at the plant.

21 Q. Do you remember being out of work for this
22 period of time at all?

23 A. I have to go with this if this is -- that
24 covers that period of time.

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1 Q. So you don't remember what happened as a result
2 of this evaluation by plant medical? Do you remember if
3 you were returned to work with restrictions or you went
4 back out of work?

5 A. They may have done the restrictive. They may
6 not have. I'm not exactly sure, short of seeing what
7 medical would put out in response to that. I don't
8 really know.

9 Q. So you can't remember?

10 A. Well, okay, let's go with can't remember.

11 Q. At some point in time you were out of work and
12 you were summoned back to return to work.

13 A. Okay.

14 Q. Right?

15 A. Well, actually -- somewhere in there, yes.

16 Basically, that's sort of what this things looks like.

17 One of those you need to have an evaluation or something
18 like that. That would fall under that same type of
19 heading, I guess.

20 Q. Did you ever return to work but in a different
21 position?

22 A. They brought me back -- let's see. What did I
23 do? I did the left side fender installer. That was the
24 last thing I did.

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1 Q. Do you have any recollection of when that
2 occurred, when you were reinstated to left side fender?

3 A. Let's see. Terminated in May. Somewhere
4 probably, let's say, February/March, somewhere in there.
5 And maybe even January, perhaps. I'm not sure.

6 Q. Before you were doing left side fender, before
7 you were reinstated, were you out of work?

8 A. Yes.

9 Q. Do you remember the longest time period that
10 you were out of work, generally?

11 A. No. They were generally around the same time.
12 I'm assuming they were around the same length of time.
13 So to -- no, I can't say in any particularity which time
14 I was out longer.

15 Q. Let me rephrase that.

16 Do you remember or do you recall how long a
17 time period at any one time you were out of work? Say
18 were you out of work for more than two months? Were you
19 out of work for six months? Do you remember --

20 A. I don't remember six months. It may have been,
21 but short of having everything right there, I'm not
22 really sure. I have been occupied with a lot of other
23 things.

24 I don't remember it being -- this being the

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1 longest since the termination, this would have to be the
2 longest that I have ever gone with it. I think before it
3 may have been a couple of months, maybe two, three
4 months. Again, short of having it in front of me...

5 Q. Sure. So are we agreed that before you got
6 placed back in left side fender install, that you had
7 been out of work for some kind of extended period of
8 time, maybe a couple months?

9 A. Okay, we could say a couple months, perhaps.

10 Q. Is that fair? Do you remember that?

11 A. That would be a fair one. That would be a fair
12 one.

13 Q. You were out -- I may end up saying "on leave."
14 What I mean by "on leave" --

15 A. Now I understand the context that you're using.

16 Q. You're on a medical leave, you're out for your
17 elbow. You're out on leave and then how did you come to
18 work in the left side fender install position?

19 A. They brought me back. They gave me a PQX and
20 someone decided I could do left-sided fender.

21 Q. You said PQX. What do you mean by that?

22 A. A PQX is basically they're going to put you on
23 another job, have you doing something else other than
24 what you're normally doing.

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1 Q. When you say "they," who are we talking about?

2 A. When I say "they," I mean the corporation.

3 MS. WASSON: Can we mark this as Exhibit 4,
4 please?

5 (Smiley Deposition Exhibit No. 4 was marked
6 for identification.)

7 BY MS. WASSON:

8 Q. Mr. Smiley, do you recognize this letter?

9 A. This is letting me know that there was a PQX
10 for left side fender installer.

11 Q. Do you remember receiving this? Did you get
12 this letter?

13 A. I can't say that I remember it. That would be
14 what, probably by column number I'm thinking. DNR, no.
15 But I'm sure I received it because I did do left side
16 fender install.

17 Q. It says on that first line, "A PQX placement
18 search has been conducted"...

19 A. Uh-huh.

20 Q. Do you know what that means?

21 A. What that basically means, my understanding of
22 it is that they will look at whatever it is that is
23 bothering you and they will try and find something else
24 that they say would cause you not to aggravate that

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1 injury or whatever area.

2 Q. Do you know who decides?

3 A. That's somewhere up in the medical and Human
4 Resources.

5 Q. Have you ever heard of the PQX Placement
6 Committee?

7 A. I have heard of them, yes.

8 Q. Do you know who makes up the PQX Placement
9 Committee?

10 A. The individuals, no, I don't. I don't know
11 exactly what it is.

12 Q. Is the union involved with that?

13 A. Supposedly.

14 Q. Have you ever sat in on one?

15 A. No, I have not.

16 Q. Supposedly it's supposed to be a joint
17 committee with the management and the union folks.

18 A. Somewhere in there, yes.

19 Q. You were telling me that the committee looks at
20 what's wrong with you and tries to place you somewhere
21 else in another job?

22 A. Yes.

23 Q. In this instance, it looks like the PQX
24 Placement Committee identified left side fender install

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1 as your new job?

2 A. That's what's there. I have to go with what's
3 on this letter.

4 Q. When you got this letter and you were told to
5 go to left side fender install, did you know what that
6 position entailed? Were you familiar with that one?

7 A. Still in body shop, I know that much, because
8 of the B. So you already knew it was in body shop.
9 Fender install, just kind of take it as the name implies,
10 putting on fenders. Not being sarcastic.

11 Q. No. That's fine.

12 Did you ever object to being placed in that
13 particular job?

14 A. I pretty much do whatever they put in front of
15 me.

16 MS. WASSON: Can we mark this as Exhibit 5,
17 please?

18 (Smiley Deposition Exhibit No. 5 was marked
19 for identification.)

20 BY MS. WASSON:

21 Q. This is a document that we produced to you
22 during discovery --

23 A. Okay.

24 Q. -- in your case.

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1 A. Uh-huh.

2 Q. It has the PQX codes for you.

3 A. Okay. D06 and B09. Okay.

4 Q. Looks like these PQX codes. Are these PQX
5 codes an accurate summary of your restrictions?

6 A. Pretty much. Pretty much.

7 Q. That pound sign here where it says on the
8 document "No lifting over 15" pounds?

9 A. Fifteen pounds.

10 Q. It's a 15-pound lifting requirement or lifting
11 restriction?

12 A. Yes.

13 Q. You can see here that it was the left side
14 fender install?

15 A. Uh-huh.

16 Q. I guess that B38, does that mean like where --

17 A. Column number B38. That's where it's located
18 inside the facility. 9110 is the area, and 303 is the
19 locale.

20 Q. It says down at the bottom that this job is
21 approved by the OSHA nurse and safety?

22 A. That's what it says.

23 MS. WASSON: Can I have this marked as
24 Exhibit 6, please?

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1 (Smiley Deposition Exhibit No. 6 was marked
2 for identification.)

3 BY MS. WASSON:

4 Q. If you will take a look at this document for
5 me, Mr. Smiley.

6 A. Uh-huh.

7 Q. This one looks sort of like the one I showed
8 you earlier. It's a job description. It looks like this
9 one is for the left side fender, right? Can you take a
10 glance through that and see if that's an accurate job
11 description for the duties of that job description.

12 A. I don't remember that.

13 Q. Which one?

14 A. No. 16, it says, "If the operator drops a hinge
15 bolt in the car," it looks like something "dropped bolt
16 into C.R.T." okay. Inner drop bolt in the C.R.T.
17 computer. There are no hinges on the fender.

18 Q. So you would say 16 isn't really something that
19 you would do in that job?

20 A. I'm trying to remember, because -- something
21 with the lift gate, but I'm thinking it was already
22 there, already on the lift gate. Trying to remember how
23 the operation went.

24 Q. Take your time.

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1 A. Okay. Okay. I have to go with what they say.
2 Fender to body. Still trying to figure out which peg
3 that is. Okay. I'm still thinking the hinge bolt in the
4 car. I'm thinking -- we had to do something in the back.
5 I think it was just unloosen one bolt back there and that
6 was with the gun.

7 On No. 11 where it says open the doors and
8 post -- front and rear -- right rear door -- front and
9 rear door opening, and I'm trying to remember -- I don't
10 remember -- I think we had those little door clamps up
11 there. I'm trying to remember the job. But okay.

12 Q. What do you think about No. 16? Do you think
13 that's fair, or do you not remember doing that?

14 A. I don't remember doing that.

15 Q. Everything else?

16 A. Decent assessment.

17 Q. I know we spent a lot of time previously
18 talking about the right side door fender job and exactly
19 what you did. You used the carrier and all. Can you
20 tell me about the left side fender install job in sort of
21 the same way that you were telling me about what you did
22 previously?

23 A. What I remember with the left side fender, the
24 actual fender would come down the carousel. As the

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1 vehicle is approaching, it was basically as almost like
2 an intersect. I would be over here. I would lift the
3 fender up, trying to use my left for that. We would have
4 to use tools called a Yankee. It may be 13 inches long.
5 Basically what you're doing with the Yankee, think
6 inverted -- or even mechanical screwdriver, if you will.
7 You use a plunging-type motion and in turn right turn,
8 left loose. You would do that. Start to screw in a
9 couple of turns. One in the front part of the fender,
10 one near the rear. So it was like maybe two, possible
11 three, bolts with that.

12 Q. Hold on. Are you doing front and back fender?

13 A. No. The fender itself. The fender usually
14 takes I think six screws in it. It takes six screws. If
15 you were to go -- I think it's called catwalk there.
16 Inside the fender where the plate steel is thin, there's
17 like six different holes in there. Attach it to the
18 frame on the vehicle.

19 Q. So did you say that you would sort of manually
20 screw it in first and then use the tool?

21 A. Yes. You have to try and twist it or actually
22 after a while, when you're halfway decent at it, if you
23 have a magnetic head on it, a lot of times you can get it
24 in there. Like I said, you're yanking. It's called a

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1 Yankee. It's a plunging type of motion.

2 Q. It's almost like an air screwdriver thing?

3 A. No.

4 Q. Help me out here.

5 A. I'm trying to think of the best descriptive
6 terms for this thing.

7 Like I say, it's about 13 inches long, 12,
8 13 inches long, possibly 14. Mechanical type of a
9 twisting mechanism in it. It plunges. So it goes up --
10 you have to do it in an up-and-down fashion. That's the
11 only way to do it. There's no side to side. It's
12 straight up and down.

13 Q. It would put the bolts --

14 A. Yes, it would screw the bolt in.

15 Q. Tell me about what you physically had to do.

16 A. Physically had to take the fender from the
17 carousel, walk to the vehicle, I had my tools -- had my
18 screws, had a little pouch. Usually carried my Yankee
19 with me to save time. Started a couple turns on the
20 first screw, couple turns on the back screw. I believe
21 go to the rear of the car and that's where I think this
22 lift gate issue with the hinge comes in because I think
23 it was one bolt up in there that you had to take out.

24 Q. There was a bolt you had to take out?

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1 A. Uh-huh. After you put the lift gate on, when
2 it's coming to where we're at is right before they paint
3 the vehicle. So it's coming down. Lift gate is on, but
4 it's not in its -- it's not really set. It's just there,
5 so to speak. And I believe, I'm trying to remember, that
6 you had to -- I think it was that back screw we had to
7 take out. We had to take the back one out.

8 Q. You told me that you're taking the fender to
9 the vehicle?

10 A. Uh-huh. Take the fender off of the carousel.
11 It was coming this way, so I would take it off the
12 carousel, walk to the vehicle, use my Yankee couple turns
13 here, couple back here, grab my gun, go around to the
14 rear of the vehicle. I think it had the door clip things
15 on it, too. You had to make sure the door was set
16 because after it left us it went to paint.

17 Q. How much did the fender weigh?

18 A. Fender is relatively light. It could be within
19 that POX range. Possibly 15, 16 pounds. Something like
20 that.

21 Q. Any other lifting that you had to do besides
22 holding your Yankee?

23 A. The Yankee and that's pretty much it. Using
24 the gun. And like I said, because of my height, I had to

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1 reach up. But other than that, no.

2 Q. And the Yankee was how many pounds do you
3 think?

4 A. Guesstimation, maybe five.

5 Q. So the left side fender install job was within
6 these restrictions, right?

7 A. Well, it was, but see, the thing about it is,
8 you're using the Yankee and it says no twisting,
9 repetitive type of actions like that. A Yankee, there's
10 no way to do it other than that. I'm right-handed.
11 Automatically it's going to go into my right hand. So
12 there's been an issue there.

13 Q. Did you let anybody know about an issue that
14 you were having with that?

15 A. I did my job.

16 Q. So you didn't tell them, hey, I'm having a hard
17 time with this?

18 A. I'm not a whiner. I did my job.

19 Q. How long were you supposed to work on left side
20 fender install?

21 A. They don't give you a specified time limit.

22 Q. So as long as it fits within your restrictions,
23 you can just keep on doing that?

24 A. Basically I'd have to say yeah. I'm not

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1 exactly versed on PQX protocol, but there was not, to my
2 knowledge, a start-stop date.

3 Q. Was it as long as you had those restrictions,
4 you could have that job? Is that how it sort of worked?

5 A. Basically I guess you could look at it like
6 that. That would be a decent assessment.

7 Q. How long did you actually work on the left side
8 fender install?

9 A. Before the swelling, I got about a week out of
10 it. I did it for about a week and it was just to the
11 point like, okay, this is not -- seeing my doctor and
12 that's when he pulled me out for the last time and then
13 that led up to where we are right now.

14 Q. So you experienced some swelling?

15 A. Swelling came back, yes. Like I said, I was
16 still using my arm. I'm right-handed. So even though it
17 says left fender install, I'm a left-handed person. So
18 you're automatically going to use your comfortable --
19 your natural hand.

20 Q. Could you have used your left hand if you
21 wanted to?

22 A. Not with the efficiency of my right hand.

23 Q. Did you ever try it with your left hand?

24 A. Yes. I had to. That's how I made a week out

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1 of it.

2 Q. You actually started doing the job with the
3 left hand because the swelling was in your right?

4 A. Then when you fall behind and it's causing
5 another set of unseen headaches and you do what you have
6 to do to do the job.

7 Q. You worked at the job for a week and then you
8 went to see your doctor?

9 A. I went back to my doctor.

10 Q. He took you out of work again?

11 A. Yes.

12 Q. Did anybody at Chrysler object to you going out
13 of work at that point?

14 A. Not that I have known of. No one had came to
15 me with it, no.

16 Q. At that time when your doctor was going to take
17 you out of work, did you ever ask to be placed in a
18 different position since this one wasn't working out?

19 A. No. He had taken me out that day. Well, I
20 seen him, I believe, probably maybe a Monday since I
21 worked that week and I think maybe that Monday I went to
22 see him. And to answer it, did I ask anyone, there
23 wasn't anyone to ask at the time. My doctor made a
24 decision and that was about the end of it.

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1 Q. When you started this job and you were working
2 on this job, this left fender job, during that week and
3 you were starting to experience the swelling, you
4 switched hands?

5 A. I also went to plant medical. There ought to
6 be a document in there with plant medical, also.

7 Q. At that point in time, during that week before
8 your doctor affirmatively took you out of work, did you
9 tell anybody, hey, this is not working out?

10 A. I did my job. Basically did my job.

11 Q. So you didn't ask to be placed in a different
12 position, not this left side fender job?

13 A. I guess it could also be viewed as I wasn't
14 known that I had a choice that I could go anywhere else.
15 So I wouldn't, you know...

16 Q. So you didn't actually ask anybody, yes or no,
17 to be placed in a different job?

18 A. To that question -- okay, I hadn't spoken with
19 anyone about another position, no, because, like I said,
20 again, I didn't know you could do that.

21 Q. Did you ever approach the union about this?

22 A. No. This was -- apparently they were behind it
23 also with them. So I'd have to say no. They put me
24 there and that was pretty much the end of it.

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1 Q. Do you think at that point you should have been
2 given another job?

3 A. Should have, would have, could have. At this
4 point it's kind of I -- because it hurt, yes, I probably
5 should have had another one, probably, but, then again,
6 like I said, after I went to my doctor, I wanted to tough
7 it out, spent a week on it, seen me and pulled me out.
8 That was it.

9 Q. Basically, your doctor decided no, no more
10 jobs, we're taking you out?

11 A. Yes.

12 Q. One more time, back to that week when you were
13 doing the left side fender job. Remember how you were
14 telling me that there were ways that you could modify
15 your right side door fitter job to make it a little bit
16 easier on your arms?

17 A. Uh-huh.

18 Q. Were there any ways that you could modify this
19 job?

20 A. Well, let's see. I'd say hard to say because I
21 hadn't done it that long. Right side door fitting,
22 because I had done it so long. First you have to learn
23 the job. You have to learn the mechanics, what to do,
24 what steps to take. Then if you're going to try any

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1 modifications, shortcuts whatever, then you can develop
2 them from there. But if you don't know how to do the
3 job -- and sometimes falls on inadequate training in a
4 lot of cases. That's what it is. Being in there 16
5 years, it is what it is. If you don't know how to do the
6 job, you're generally not going to know how to modify the
7 job.

8 Q. Just so I'm clear, are you claiming that you
9 didn't get enough training to do the job right?

10 A. That's quite possible -- basically will show
11 you and they're gone. That's the team coordinator's job.
12 Team coordinator is basically the individual if a new
13 person comes on board, this is the job you're going to
14 do, I'll stay with you for a few seconds. And it depends
15 on the coordinator because, again, that is a case by
16 case. I know what I have taught them, but it's a case by
17 case and personality by personality. Some people will
18 sit there and work with you. Some people, okay, you're
19 holding it, you're still standing here, you haven't left,
20 see you later. It's kind of subjective.

21 Q. At that point you were able to do the job,
22 albeit with swelling, but you were able to do these
23 functions, right?

24 A. Yeah. I performed those functions.

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1 Q. But by the end of that week or on that Monday,
2 after you had worked in the left side fender job for the
3 week, your doctor said you need to go back out on leave?

4 A. Yes.

5 Q. By the way, do you need to take a break?

6 A. Let's do this because I do have another
7 appointment that I would have to go to.

8 Q. That works for me. I wanted to make sure.

9 At that point in time when you were working
10 the left fender side install, do you remember going to
11 see plant medical for a status update, kind of a status
12 appointment?

13 A. No. I went to plant medical because my arm was
14 hurting. That's why I went to plant medical.

15 Q. Let me see if this refreshes your recollection
16 here.

17 MS. WASSON: Can we have this marked as
18 Exhibit 7, please?

19 (Smiley Deposition Exhibit No. 7 was marked
20 for identification.)

21 THE WITNESS: This is a medical
22 appointment. I'm reading aloud. I'm saying basically
23 it's a change of appointment type of thing.

24

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1 BY MS. WASSON:

2 Q. Do you recognize this one?

3 A. Yes. It has my name on it. Around the same,
4 2/10. Somewhere in area. Somewhere in there. But okay.

5 Q. Do you remember receiving this?

6 A. I probably -- I don't know. Is this the one
7 that I didn't receive? Because there was one that I
8 didn't receive. I'm not exactly sure which one it was.
9 But just looking at this, this looks like there's been a
10 rescheduling.

11 Q. This was in February.

12 A. Okay.

13 Q. Around the time I think that you were working
14 in the left fender job.

15 A. Okay.

16 Q. Any dispute about receiving this or the
17 authenticity of this?

18 A. None at this point, because basically all I see
19 is it's been a rescheduling of an appointment.

20 Q. It was under Chrysler's policies that, if you
21 were out of work or even if you weren't out of work and
22 you had restrictions, periodically you had to come in and
23 see plant medical, right?

24 A. Okay. Yes.

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1 Q. Is that fair?

2 A. That's somewhere in there, yes. Because
3 basically that's the letter -- from the one appointment
4 that I did miss, that was basically what they were
5 saying, substantially whatever absences you had, and
6 that's why I brought what I brought.

7 Q. So you saw plant medical apparently on 2/14/05.

8 A. Okay.

9 Q. We think.

10 A. Somewhere around there. Had to have on 2/14.
11 So 10 o'clock. 10:00 a.m.

12 Q. Do you remember anything about that
13 appointment?

14 A. No. Basically they set you down, take your
15 temperature. The doctors change so often, so it's sort
16 of like there's nothing personal involved in it. It's
17 just pretty much you're here, we're here, and we do what
18 we do.

19 Q. So would they give you a full examination?

20 A. No. They would just basically look at whatever
21 the affected area is and that's about the size of it.

22 Q. Would they issue restrictions?

23 A. That I can't answer. I don't know if they were
24 the ones, because I know PQX placement does. So as far

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1 as what Chrysler's doctors, what their full capacity is,
2 I don't know.

3 Q. If they had a problem with your current
4 restrictions, would that be something that would change
5 up your job?

6 A. If Chrysler --

7 Q. The plant medical doctor.

8 A. I'd have to assume that, if there was ever a
9 problem with it, they would have to deal with the --
10 which one is this back here that you have given me
11 earlier? PQX individuals. If there were any type of
12 discrepancy, I think that's where they would take it up
13 at. I'm not sure exactly how that works.

14 MS. WASSON: Exhibit 8, please.

15 (Smiley Deposition Exhibit No. 8 was marked
16 for identification.)

17 THE WITNESS: This is a recheck, okay.

18 BY MS. WASSON:

19 Q. Does this refresh any recollection?

20 A. Looking at it -- I mean, there's no
21 recollection on my part, but looking at the date, I know
22 Dr. Tinklepaugh was in medical. So this would probably
23 be the results of that last appointment change.

24 Q. It says at the top "Medical Pass." Do you

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1 recognize this type of document?

2 A. No, because the medical passes -- actually, it
3 got to the point they were generating them through the
4 computer, through the supervisor's computer. So I
5 wouldn't -- medical passes that I'm familiar with are not
6 laid out pretty much that way.

7 Q. Are you telling me that you didn't get a copy
8 of this?

9 A. Okay. I'd say that, yes. I don't remember
10 getting a copy of that, no.

11 Q. Do you know if these were issued when you went
12 to see plant medical or when an employee goes to see
13 plant medical?

14 A. One should be generated when -- all right. I
15 know a pass would generate something. But if this is the
16 result of a rescheduled doctor's appointment, I'm not
17 exactly familiar how they handle things in medical
18 either. It's medical. I'm assembly. I don't know how
19 they do their things over there.

20 Q. Basically you're telling me that you never got
21 this medical pass as a result of this doctor's
22 appointment?

23 A. I'm telling you if -- this looks like it's a
24 possibility. It was Shannon West. This is a

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1 computer-generated one. This isn't the normal -- this
2 isn't the normal pass. The normal pass was smaller than
3 this. I don't know what they're using nowadays. But
4 this looks like a computer-generated one. Basically,
5 your supervisor would input the information into the
6 computer. So no, I would not receive a copy of that.

7 Q. Did you ever receive a copy of a medical pass
8 like that little one that you were just talking about?

9 A. Last time I seen one of those -- I can't
10 remember. If he gave me one, they usually kept it. You
11 don't walk around with the medical pass in your pocket.
12 You take it in the medical, you present it, and then you
13 do whatever it is that you have to do there.

14 Q. You're not given one of these documents when
15 you leave?

16 A. Not just like this, no. Not that, no.

17 Q. If you look down in the second box, see where
18 it says "Medical Treatment/Information"?

19 A. Uh-huh.

20 Q. Then in the middle there it says, "No lifting
21 over 15 pounds right hand"?

22 A. Uh-huh.

23 Q. Is that an accurate statement of your
24 restrictions at that time?

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1 A. No, because it was my right elbow. That would
2 be inaccurate.

3 Q. It was really your right elbow?

4 A. Should have been elbow.

5 Q. What about the 15-pound lifting?

6 A. That would be within the weight limits that I
7 remember.

8 Q. So you went to this appointment and apparently
9 the no-lifting restriction, the 15-pound restriction, was
10 affirmed because you had already had that one. Right?

11 A. Okay. Yes.

12 Q. Around this time your doctor took you out of
13 work again, right?

14 A. Let's see. Whenever I was doing -- when was I
15 doing the right fender thing? That's the last time he
16 had taken me out, physically taken me while I was doing
17 the left side.

18 Q. Looks like you were supposed to report --

19 A. On the 9th.

20 Q. -- on the 9th.

21 A. So this would be within that time frame.

22 Q. You were placed out of work around the time
23 that you had this medical appointment.

24 A. Uh-huh.

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1 Q. Did anybody at Chrysler ever object to you
2 going out of work again?

3 A. I hadn't discussed it with anyone. So I'd have
4 to say no. I didn't discuss it with anyone. I don't
5 know if they objected or not.

6 Q. You never received a letter or anything?

7 A. Saying you shouldn't go on?

8 Q. You better be reinstated, you better report?

9 A. No.

10 Q. This is February of '05, right?

11 A. Okay.

12 Q. You were receiving workers' comp. again at this
13 time?

14 A. It doesn't start right that same week. It
15 might be a week, two weeks, three, whatever. Somewhere
16 in there I'm sure I received it.

17 Q. Workers' comp. started back up when you were
18 out of work.

19 A. Okay.

20 Q. Did Chrysler ever fight you on that or
21 challenge your ability to obtain the workers' comp.?

22 A. No.

23 Q. You were receiving your workers' comp. when you
24 were out on this leave?

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1 A. Uh-huh.

2 Q. Were you continuing to accrue seniority time?

3 A. Yes, my time was still going because it was a
4 plant-related incident.

5 Q. Healthcare benefits, you were still getting
6 them?

7 A. At the time, yes, I was still getting them.
8 All that stopped upon my termination.

9 Q. What about vacation and sick time?

10 A. They still accrued as well. Everything would
11 accrue up and until my termination date.

12 Q. You have a failure-to-accommodate claim; is
13 that right? Are you making a claim that Chrysler didn't
14 accommodate you?

15 A. Well, how's the best way to put that? Short of
16 having it worded exactly -- and I don't have my notes
17 with me. Don't have the information right there in front
18 of me. The way that I had it worded --

19 Q. Are you talking about your charge?

20 A. Yes. You said it was a failure of
21 accommodation.

22 Q. Do you want to see your charge of
23 discrimination?

24 A. Yes.

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1 Q. Okay. Let's take a look at that.

2 A. Because if there was an accommodation --

3 Q. Let's take a look.

4 MS. WASSON: Can you mark this as
5 Exhibit 9, please?

6 (Smiley Deposition Exhibit No. 9 was marked
7 for identification.)

8 THE WITNESS: Okay.

9 BY MS. WASSON:

10 Q. That is your signature down at the bottom?

11 A. Uh-huh.

12 Q. This is your charge of discrimination that you
13 filed?

14 A. Yes.

15 Q. Your two causes of action here where it says,
16 "Adverse employment action: Denied Reasonable
17 Accommodation, Terminated." Is that correct?

18 A. Okay. Yes.

19 Q. You're claiming that you were denied a
20 reasonable accommodation?

21 A. Well, okay, yes. That would -- at the time,
22 yes.

23 Q. Tell me about the basis for that claim.

24 A. Okay. Terminated kind of speaks for itself.

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1 Q. We will talk about that in a second.

2 A. Reasonable accommodation, if I have an injury
3 to my right arm and the job you put me on causes me to
4 aggravate said right arm again, I think this is an issue
5 of -- I think is an accommodation issue at this point
6 because you look at my height, my stature, I'm 5 foot 8.
7 Put me on a job that I basically have to -- I'm not going
8 to say I sat here and reinjured it, but I reaggravated
9 the same problem that existed which gave me the PQX in
10 the first place.

11 Q. That's the basis for your accommodation claim?

12 A. Yes.

13 Q. Did you object to being out of work? When your
14 doctor took you out of work and you didn't have to do the
15 left side fender install anymore, did you object to that,
16 to being placed out of work?

17 A. I don't understand.

18 Q. Did you want to go back and get another job?

19 A. He pulled me out and he's my doctor, so I went
20 with -- since he's the only treating physician I had on
21 the issue, it's getting to the point it was going on far
22 enough, pain is still there, I went with what my doctor
23 said.

24 Q. The failure to accommodate, you were saying

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1 that this left fender install position is the basis for
2 your reasonable accommodation claim.

3 A. Okay.

4 Q. How is that discriminatory?

5 A. Okay. Let me put it this way: Again, same
6 argument I just gave you. You know my right arm is bad,
7 why would you put -- why in accommodating me, as you say.
8 One, we already know it was already worded incorrectly.
9 Two, you have an issue that I'm using a Yankee that
10 causes me to aggravate the injury all over again. Is
11 that a true accommodation?

12 MS. WASSON: It's 12:15. Can we go off the
13 record?

14 (Discussion off the record.)

15 (A recess was taken.)

16 BY MS. WASSON:

17 Q. We were talking about the left fender install
18 job and we were talking about in connection with your
19 accommodation claim.

20 A. Uh-huh.

21 Q. Did you ever ask your doctor whether the
22 accommodations that the PQX team gave you would be okay?

23 A. I don't recall having that conversation with
24 him, no. We didn't discuss that. I told him what I was

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1 using. Told him how -- gave him specifics on the
2 mechanics, how it worked. Like I said, he pulled me out.

3 Q. But prior to that, when you were just being
4 installed at that left fender job, did you ever talk to
5 your doctor about whether that would be a suitable job
6 for you?

7 A. No. He and I had not discussed it.

8 Q. Let's move on to your termination.

9 A. Okay.

10 Q. You were on leave starting sometime after that
11 week that you worked in the left fender install job, and
12 we think that that was mid-February '05.

13 A. Somewhere in there, yes.

14 Q. You were on leave and then presumably you
15 received this letter. We will mark this as Exhibit 10.

16 (Smiley Deposition Exhibit No. 10 was
17 marked for identification.)

18 BY MS. WASSON:

19 Q. Did you, in fact, receive that letter?

20 A. Yes, I remember this one because it gave me the
21 dates that I had to return by, and that was May 13th, the
22 day I was terminated.

23 Q. It says in the first paragraph on the third
24 line, you are to return to the plant employment office on

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1 or before May 13th to provide satisfactory evidence to
2 substantiate your failure to report. Correct?

3 A. According to our records, substantiate -- okay,
4 yes. We did that.

5 Q. It says in the second paragraph that the
6 absences between February 18th, 2005, and the date you
7 report have to be substantiated, right?

8 A. That is correct.

9 Q. Then the third paragraph talks about if you
10 don't report by May 13th and you don't submit your
11 evidence, then your seniority will be terminated?

12 A. That's what it says.

13 Q. Then it gives you the office hours that you can
14 come in?

15 A. Uh-huh.

16 Q. As of this point, when you received this
17 letter, you understood that you needed to bring in
18 satisfactory evidence to substantiate your injury, right?

19 A. I did what it asked me to do, yes.

20 Q. Did you ever tell anybody prior to May 13th
21 that you'd have a problem supplying the information that
22 it asked for, this letter asked for?

23 A. Did I ever tell anyone? Who would I tell?

24 Q. Anybody at Chrysler.

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1 A. No. I hadn't spoken with anyone from Chrysler.
2 Prior to that, like I said, when I found out that I
3 missed the May 4th appointment and then that was by
4 notification and letter, I said, okay, you want me there
5 by the 13th. I was there on the 13th.

6 Q. You never received anything telling you that
7 you had an appointment on May 4th?

8 A. Not that I remember, because that's the only
9 appointment that I missed. I don't remember anything on
10 that one. That's the only doctor's appointment that I
11 had missed.

12 Q. The medical pass, this one right here, that we
13 looked at, that's Exhibit 8; is that right?

14 A. Yes.

15 Q. This exhibit has your reexam date on it,
16 correct?

17 A. Okay. But as we also said, that I don't
18 know -- I wasn't given one of these. But this paper does
19 have a reexam date on it.

20 Q. Right. So this one has the reexam date as
21 May 4th, but you never got this one, as far as you can
22 tell?

23 A. Yeah, I don't remember receiving it. I don't.

24 Q. So you get this letter. It says you missed

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1 your appointment on May 4th and you have until May 13th.

2 A. Okay.

3 Q. What did you do in response to this letter?

4 A. That's when I showed up. I came in on the
5 13th.

6 Q. Did you receive with this letter any kind of
7 information about what you needed to do to substantiate
8 your injury?

9 A. They probably had one of those in there.

10 Q. Let's take a look at this .

11 MS. WASSON: Can we have this marked as
12 Exhibit 11, please?

13 (Smiley Deposition Exhibit No. 11 was
14 marked for identification.)

15 BY MS. WASSON:

16 Q. Mr. Smiley, I'm going to ask you to take a few
17 minutes and read through this information notice.

18 A. Okay.

19 Q. Thanks.

20 A. Okay.

21 Q. Have you ever seen this before?

22 A. Yes.

23 Q. Where have you seen it?

24 A. Usually at the plant. They give you those --

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1 they give you these things.

2 Q. Is it part of a policy notebook that you got or
3 is it something that would be handed out to you?

4 A. No. Generally, you receive one of these at the
5 front desk or sometimes you could -- the spots that I
6 have seen it was at the front desk. Every time I
7 received one was at the front desk.

8 Q. The front desk of medical?

9 A. No. No. Personnel.

10 Q. Personnel.

11 A. Human Resources.

12 Q. Did you receive one of these along with this
13 letter?

14 A. I'm not sure, but I may have.

15 Q. So you were familiar with this at the time of
16 May 13th, right?

17 A. Okay, yes.

18 Q. This lists the documentation requirements in
19 the center here?

20 A. Uh-huh.

21 Q. It says in the middle, "Reinstatement/
22 Substantiation From Temporary Separation, Illness or
23 Injury (Five days or more)." Right?

24 A. Uh-huh.

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1 Q. Anybody that's been out for five days for
2 whatever reason, sick?

3 A. This is the criteria.

4 Q. This is the criteria that pertains to them?

5 A. Uh-huh.

6 Q. Down here in this box, it's the third paragraph
7 down in the -- see how it's sort of a box? It says
8 management has the right to further investigate and
9 verify the authenticity of the statement as presented by
10 the employee?

11 A. Yes. That's what it says.

12 Q. Management has the right to take disciplinary
13 action when the statements are altered or falsified or
14 otherwise unsatisfactory.

15 A. That's what it says.

16 Q. That's what it says, okay.

17 It also says here in the reinstatement
18 section that no faxes are allowed?

19 A. That's correct, that's what it says.

20 Q. Do you know why that would be?

21 A. I'm not going to speculate on that. That's
22 their call.

23 Q. You knew you had to report by May 13th, and you
24 knew what the documentation requirements were, right?

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1 A. Uh-huh. Okay.

2 Q. We talked about this. What did you do in
3 response to the letter? You told me --

4 A. I came in.

5 Q. You came in. On May 13th, right?

6 A. Yes.

7 Q. Where did you go?

8 A. Plant personnel is the only place you can go
9 because my badge no longer works, so I would have to go
10 straight to personnel.

11 Q. Who did you talk to there?

12 A. That's where I met Ms. Ford.

13 Q. Who is she?

14 A. Open-ended question. Personnel, I think Human
15 Resources. Something like that. Personnel.

16 Q. So she works in the personnel office?

17 A. Yes.

18 Q. Did you know her?

19 A. Not know her, no. I mean, know of, she knows
20 of me, one those type of things. We don't know each
21 other. In fact, it had been brought to my attention, it
22 was the same question, "Do I know you?"

23 And I was like "No."

24 "Have we met?"

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1 "No, we have not."

2 We have never been formally introduced. We
3 haven't.

4 Q. It's safe to say you were not friends?

5 A. You could still say that.

6 Q. You never worked together?

7 A. No.

8 Q. You didn't know her outside of work?

9 A. No.

10 Q. Any other time that you talked to her --

11 A. No.

12 Q. -- before this time on May 13th?

13 A. No.

14 Q. Any issues or problems with her prior to this
15 time on May 13th?

16 A. No. Not that I know of.

17 Q. You see Ms. Ford at the personnel desk, right?

18 A. Uh-huh.

19 Q. What happens then?

20 A. Okay. Goes on, well, what happened. I gave
21 her the note stating why I was there. It came back with
22 the reinstatement thing, altered that. It was a
23 reinstatement on the paper changed up to substantiation
24 to top of it.

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1 Q. Let's take a look at some documents.

2 MS. WASSON: Exhibit 12, please.

3 (Smiley Deposition Exhibit No. 12 was
4 marked for identification.)

5 BY MS. WASSON:

6 Q. Do these look familiar?

7 A. Those are my doctor's notes. Copies of the
8 originals.

9 Q. Are these the notes that you brought in?

10 A. These are a copy of the notes that I obtained
11 to bring in, yes. These are the original copies -- these
12 are the original notes and this is a copy of the notes.

13 Q. This is a copy of the original notes?

14 A. Correct.

15 Q. Did you bring a copy of the original notes or
16 did you bring the original --

17 A. Individual, no.

18 Q. -- individual notes?

19 A. I brought what you see in front of you.

20 Q. You brought this document?

21 A. Yes.

22 Q. Why didn't you bring the original notes?

23 A. Well, one, you kind of keep those because if
24 you give up your originals, if something happens, there's

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1 never any proof that you did whatever you say you did.
2 Also, each one of these notes that shows a call-in number
3 from a specific date that it was called in. So really
4 didn't see an issue there.

5 Q. Couldn't you ask for a copy from Chrysler,
6 though? Couldn't you ask them to copy them for your
7 records?

8 A. Just my originals. It's kind of the way you're
9 programmed, to keep your originals when you can.

10 Q. Where were these original notes at the time?

11 A. They were probably home.

12 Q. They were home?

13 A. Uh-huh.

14 Q. These notes don't say what kind of injury you
15 had, right?

16 A. They all say "resume no work" or "continue no
17 work," "continue no work," "continue no work."

18 Q. But they don't describe your injury in any way.
19 They don't say what it was?

20 A. Well, considering it's dealing with the same
21 injury, could be said that it applies to all the same
22 injury, to the same incident.

23 Q. But what I'm asking you is: Is there anything
24 on these notes that specifically says what your injury

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1 was, yes or no?

2 A. There is no DX code on this particular one, no.

3 Q. Any other written statement describing your
4 injury or saying what it was?

5 A. No. Just "continue no work."

6 Q. Just "continue no work"?

7 A. Uh-huh.

8 Q. So you bring these notes to the personnel
9 office and you see Ms. Ford.

10 A. Uh-huh.

11 Q. What happens then?

12 A. Informed me that I didn't have the DX code,
13 which is why I went back out and received -- went back to
14 Dr. Bandera's office. His secretary wrote the proper DX
15 code on whichever one it was, but she wrote it on a copy
16 of the notes -- the copy of the original notes that I
17 had.

18 Q. Before that time did Dawn or anyone else in the
19 personnel office give you anything?

20 A. As a matter of fact -- well, I'll wait until
21 she puts that --

22 MS. WASSON: I'd like to mark another
23 document, please.

24 (Smiley Deposition Exhibit No. 13 was

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1 marked for identification.)

2 THE WITNESS: This is the one she wrote
3 "Substantiation."

4 BY MS. WASSON:

5 Q. Do you remember receiving this document?

6 A. Actually, I didn't receive it. Was this the
7 one that I received? There was one that there was
8 something that I had to sign for. I'm thinking this is.
9 And I didn't sign for it because, like I said, it had the
10 scratched-out word "substantiation" and put that in
11 there. Then you're asking for -- just because of the way
12 that it's altered, this is not the original form that
13 was -- that is normally presented.

14 Q. What you're telling me is that this is not the
15 original substantiation form?

16 A. What I'm telling you is if you look to the top,
17 you see "reinstatement" crossed out, "substantiation" put
18 in. You look down here and in their handwriting. This
19 is not the proper form.

20 Q. Did you get a copy of this form?

21 A. I have a copy of it, yes.

22 Q. Did you get one at the time?

23 A. This was the one that she was trying to give
24 me, but I have had one since then.

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1 Q. She tried to give this to you?

2 A. Yes.

3 Q. You didn't take it?

4 A. I didn't sign it.

5 Q. Did you take a copy of it?

6 A. Probably not if I didn't sign it. But I
7 already knew what -- the sheet says this is the
8 diagnostic code and that's what I went out and got.

9 Q. She also has a few other boxes checked, right?

10 A. Uh-huh.

11 Q. Did she explain to you what you needed?

12 A. Explain, I wouldn't say explained, no.
13 Basically said, you know, you need this, that, and the
14 other and it has to have this. And each one of these
15 notes have everything that they wanted, continued, resume
16 no work. The only thing it didn't have was the
17 reinstatement -- not reinstatement, forgive me -- the DX
18 code on it.

19 Q. Did she explain to you that it needed the
20 diagnostic code?

21 A. Yes. That's when I went to get the DX code.

22 Q. Did she explain to you that you needed the
23 statement of total disability?

24 A. Continued no work, kind of covered it.

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1 Q. Did she talk to you about that, though?

2 A. Not really. What's the best word? Trying to
3 figure out the best way -- do you know Dawn?

4 Q. I have met her.

5 A. Let's put it this way, then: It wasn't -- no,
6 we didn't really discuss it. It was basically I need my
7 DX code to pass this off. Like I say, I told them these
8 are copies of the originals. I never had a problem with
9 that prior. I haven't -- obviously, this is the only
10 instance that there's a problem with anything that I have
11 done.

12 Q. Hang on. We're going to explore that just a
13 little bit more in a second. What I want to know is she
14 never mentioned to you that you needed a statement of
15 total disability on your notes?

16 A. No. Well, obviously she said something about
17 it because she has it marked off here, but what I'm
18 saying is, like I said, this was already altered. So I
19 don't know exactly what more -- all right. Give you a
20 good example. Return-to-work date, then you have
21 penciled in "estimated return to work date." That's
22 there. What you're asking is already there.

23 Q. Where?

24 A. Okay. Let's go with No. 1 dated 2/23/05. 2/23

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1 and you got the through sign, 3/9/05.

2 Q. That would be your estimated return-to-work
3 date?

4 A. Yes. This is the same physician that I have
5 dealt with the whole time since this injury.

6 Q. Did she tell you, though, that you needed a
7 better or a clearer return-to-work date?

8 A. She didn't say -- basically I guess -- I don't
9 remember exactly.

10 Q. Tell me what she told you.

11 A. It was kind of going back and forth and, like I
12 said, I seen that it was getting to the point that it was
13 getting ridiculous. So basically I went out to get the
14 DX code. I have never had a problem with my notes.
15 These are the same style notes that I have always had and
16 I have never had a problem with them.

17 Q. So when you were having these conversations,
18 you came to the window, you gave her the notes.

19 A. Uh-huh.

20 Q. She said, no, notes aren't good enough.

21 A. First it was -- what was it? First it was the
22 issue of why didn't I show up for the appointment. We
23 got through that. Then we got to the notes. It was no
24 DX code. Here, wait a minute, let me give you this right

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1 here. This is all marked up. Well, I need you to sign
2 it. I'm like, I can't sign that. It's changed. I see
3 "reinstatement." You put "substantiation." To me it
4 tells me it's a different form.

5 Q. Did she give any explanation of why she was
6 using this form?

7 A. No.

8 Q. Did she at least mention to you all four of the
9 things that she had checked?

10 A. No, because she was kind of stuck on the DX
11 code because this is the first one because it doesn't
12 have the DX code there. I left and went to Bandera's
13 office and his secretary put the proper DX code on it.

14 Q. She has down here "original notes."

15 A. Uh-huh.

16 Q. Did she tell you you needed an original note?

17 A. Well, she says she wanted the original notes.
18 There was really no time to do it. It was barely enough
19 time to get to Bandera's. And these are copies of the
20 original notes.

21 Q. But she told you at that time when you were at
22 the window --

23 A. She wrote that on here.

24 Q. She wrote it on here. Did she tell you?

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1 A. No, not that I can remember, no. Like I said,
2 it was back and forth. It was back and forth. There was
3 probably some things that I don't remember. But I
4 distinctively know that she was stuck on the DX which is
5 why that's what I focused on, getting the DX code.

6 Q. But you saw this document before you went to
7 the doctor's office --

8 A. Uh-huh.

9 Q. -- to get the DX code?

10 A. Uh-huh.

11 Q. You saw this document. You saw that it had
12 four things checked?

13 A. Yes. And also had two things scratched out.

14 Q. Right. Okay. So you knew this is what she
15 wanted you to get, these things?

16 A. Again, that was the DX because I knew that's
17 what she was focusing on. I don't want to use the word
18 "harping," but that is what she was focusing on, the DX
19 code. I have used the same physician. He has written
20 the same notes for me as long as I have had him. There
21 has never ever been any problem.

22 Q. So you submitted notes that looked like this
23 before?

24 A. Yes.

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1 Q. Notwithstanding the note that didn't look like
2 this, this other one that you submitted from
3 Dr. Bandera's office?

4 A. I submitted these one or two. I'm not sure
5 how -- obviously they have it.

6 Q. He didn't always submit notes like this.
7 Sometimes he would submit the other kind that we looked
8 at as a prior exhibit?

9 A. These are the notes that he gives you when you
10 have an appointment with him to take back to Chrysler.
11 That's why I'm saying he may have sent that to them. I
12 don't know. But these are the notes that I received from
13 him.

14 Q. This one?

15 A. Again, I'm not sure if he sent it or what. I'm
16 not sure. But this is what was handed to me.

17 Q. At the time --

18 A. Yes.

19 Q. -- that you were supposed to come in and
20 substantiate back in May of '05?

21 A. These are what I was handed.

22 Q. This form indicates that if you don't come back
23 to plant personnel by 3:00 p.m. on May 13th with the note
24 that meets all the substantiation requirements, then your

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1 seniority will be terminated. Is that correct?

2 A. That's what it says.

3 Q. What did you do next? You had this discussion
4 or conversation with Dawn?

5 A. I went to Dr. Bandera's office. I submitted
6 basically this. And what she did, she wrote the DX code
7 in one of these corners. And I went back to personnel.
8 It was a little after 11:30 -- after 11:30. Maybe 11:35
9 or 11:40, but I seen -- what is her name? I knew Dawn
10 would get it. I knew Dawn would get it. So I gave her
11 that.

12 Q. Was Dawn the person you were supposed to give
13 the notes to?

14 A. Yes, but there was nobody -- because my
15 daughters were at school at 1 o'clock. There was no way
16 I could have did that. But I'm sure she didn't mention
17 that either.

18 Q. Hang on for that. I'm going to mark this
19 exhibit as Exhibit 14, please.

20 (Smiley Deposition Exhibit No. 14 was
21 marked for identification.)

22 THE WITNESS: This is the one. It has the
23 DX code written on it which covered all of them.

24

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1 BY MS. WASSON:

2 Q. You went to your doctor, Dr. Bandera?

3 A. Uh-huh.

4 Q. What did you do when you got there?

5 A. Dr. Bandera wasn't in. His secretary, I asked
6 her for the DX code. They were having a problem with my
7 notes saying they didn't have the DX code on it. She
8 wrote 726.32. I returned to Chrysler.

9 Q. Whether you agreed with her or not, you knew
10 that one of Dawn's -- not Dawn's requirements -- the
11 requirements on this letter was to bring an original
12 note?

13 A. That would be Dawn's requirement because the
14 original note is not on that letter.

15 Q. The original note is not on this letter?

16 A. That is handwritten.

17 Q. Okay. That's fine. But that is within this
18 document now. She wrote it in, correct?

19 A. She did that, yes.

20 Q. You knew that Dawn was expecting that you were
21 going to bring in an original note?

22 A. These are the original notes. You can look at
23 the call-out numbers and tell these are the original
24 notes. These are all different notes on different days.

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1 Q. But these are photocopies. They are not the
2 original.

3 A. They are photocopies of the original.

4 Q. They're photocopies of original notes?

5 A. There's nothing in here that says anything
6 regarding a photostatic copy of an original document.

7 Q. If you knew that Dawn had entered this entry,
8 "original notes," why didn't you just ask the doctor's
9 office to reissue original notes?

10 A. Then she can put -- I'm sure she can do DX
11 codes. Now you're asking her to establish different
12 notes. Now I would have a different signature. No, I
13 cannot do that.

14 Q. You can't do it because it would have a
15 different signature?

16 A. This is Dr. Bandera's signature. If she was to
17 reissue these notes again, then it would be an issue,
18 well, wait a minute, the signature is different. The
19 only thing that I had her do -- I asked her to do was
20 give me the DX code which she placed right here.

21 Q. Then you came back to Chrysler?

22 A. Then I came back to Chrysler.

23 Q. Did you ever tell anybody at Chrysler that the
24 doctor wasn't in, you couldn't get original notes?

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1 A. I told -- who was the individual that I gave
2 this to? You mean original notes. I had the original
3 notes at the house at the time. I came back with the DX
4 codes. What is her name? Anyway, she was letting me
5 know she didn't work in personnel anymore, but I knew
6 that Dawn would receive it. I knew that she would get
7 them.

8 Q. You gave this copy to somebody in personnel?

9 A. I can't think of her name right offhand. She
10 was close enough to personnel that I know it would be
11 received by personnel.

12 Q. One more thing. Again, you know that written
13 on this page says "original notes." You know you have
14 your original notes at home. Why didn't you come on back
15 home to get your original notes?

16 A. Trying to reach Bandera. There was no way that
17 I would have been able to go home, get those notes, make
18 it to Bandera's office to get the DX code put on, and
19 return to Chrysler. There was no way.

20 Q. Did you tell anybody that at Chrysler?

21 A. I told -- well, I told what's her name? What
22 is that lady's name?

23 Q. Is it Ms. Flemming?

24 A. Angeline.

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1 Q. Angeline?

2 A. Angelina. Angeline. Her. Yes. Because she
3 was like, "I don't work there anymore."

4 I was like, "Look, I know you don't work
5 there anymore. Can you give this to Dawn, please?"

6 I'm thinking, okay, if there's any problem,
7 they will contact me, whatever, whatever. That same day
8 apparently I was terminated. I was there before 3:00.
9 Granted, it wasn't at the whatever time, 1:30, but again,
10 my daughter was out. I already had one with me at the
11 time. I couldn't have done it.

12 Q. But you didn't tell anybody that?

13 A. I told Angela to make sure that she got this; I
14 had to go out to get my daughter. Plus, does she have a
15 copy of the note from my daughter's school?

16 Q. A copy of the note from your daughter's school.

17 A. She doesn't have that.

18 Q. Hold on a second. I think we have it. I think
19 you may have submitted it.

20 A. I submitted all that stuff at the same time,
21 because my daughter got out of school early that
22 afternoon.

23 Q. Help me understand why that's important.

24 A. Well, that deals with the 1 o'clock thing.

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1 Like I said, 1 o'clock I had to pick my daughter up. She
2 gets out of school. Now we're dealing with this. This
3 is what I focused on, DX code, brought back to Chrysler,
4 I submitted it.

5 Q. You went to the doctor. Tell me again, what
6 does that have to do with picking your daughter up at
7 1:00? You went to your doctor, you got what you thought
8 was your DX code on your notes. What does picking up
9 your daughter at 1:00 have to do with anything?

10 A. Chrysler opens up at 1:30. I have to pick up
11 my daughter at 1 o'clock. Two places at the same time.
12 Can't hardly be there.

13 Q. I thought you gave the note in the morning?

14 A. That's precisely it. They already knew this.
15 This is why I was -- Angelina to make sure that she got
16 this. I figured that everything was satisfied at that
17 point.

18 Q. At 11:30 when you gave it to Angela --

19 A. 11:40, 11:35, yes.

20 Q. -- if you thought it was satisfied at that
21 point, what does that have to do with picking your
22 daughter up at 1:00? I'm sorry. I'm missing it. Tell
23 me.

24 A. Okay. Again, I have to pick my daughter up at

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1 1:00. Still on that same Friday. I'm going to pick her
2 up. I got to pick her up. Now, in the interim, because
3 this was going on, I think it was 10 something, I was
4 trying to make it back to Bandera's office because I know
5 he leaves early on a Friday. I got his secretary to
6 install the proper DX code. I brought that back to
7 Chrysler. At the time I have never had a problem with
8 submitting notes of this fashion before. Ever. Ever.
9 This was not my first time being out at Chrysler.

10 Q. Right. You had done the substantiation
11 requirements before?

12 A. Right. Maybe not quite with this, but I have
13 done it before.

14 Q. You submitted that stuff at 11:30. Gave it to
15 Angelina; told her give it to Dawn?

16 A. Uh-huh.

17 Q. You went on your way.

18 A. I hadn't heard anything. Called in, never
19 nothing on my answering machine. Next thing I know I was
20 terminated for not returning.

21 Q. Let me just make this clear in my mind. I know
22 we're going over it again and again, but I want to make
23 sure I understand it.

24 Did you tell anybody at Chrysler that you

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1 couldn't go home and get the original notes by 3 o'clock
2 that day for any reason?

3 A. Okay, now you're asking me did I do it that
4 way. She didn't ask me could I. She said I needed the
5 DX code. That's what I went back to get, the DX code.
6 That's why I went to Dr. Bandera's office.

7 Q. Right. You thought she was focused on the DX
8 code. You were focused on the DX code.

9 A. She knew I went to Bandera's office. The note
10 kind of speaks for itself.

11 Q. I'm going to ask you one more time.

12 A. Okay.

13 Q. You knew that she wrote down "original notes"
14 here, right? You knew that. You had seen this document.
15 You had seen the changes that she made to it?

16 A. Uh-huh.

17 Q. You knew that. You never told anybody, hey, I
18 have got the notes at home, but I'm not going to have
19 time to get them to you?

20 A. She asked for the original. I'm like, these
21 are the original notes. She knew these are the original
22 notes. You can look at the dates and tell these were the
23 original notes. They satisfied all the requirements in
24 the reinstatement. Now, like I said, you handed me

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1 substantiation. Then you have altered it and you change
2 it in what, here, here, here. And no.

3 Q. You say, yes, they are the original notes and
4 she says, I want the original notes. Is that how it
5 ended?

6 A. Pretty much. I'll go get the DX code and I'll
7 be back and hopefully I can get back before 11:30. I got
8 back. It was 11:35, 11:40 by the time I got back. I
9 rush in, I see Ms. Flemming, I give her this one sheet
10 here. "Can you give this to Dawn?" And that was the end
11 of it.

12 Q. In response to this original note back and
13 forth, did you ever mention that your original notes were
14 at home?

15 A. Dawn knew my notes were at home. At least
16 that's where I told her my notes were at home. I don't
17 carry my notes. I have my little bag with me.

18 Q. When she said, no, no, we need the original
19 notes, did you ever tell her, hey, I can't get back home
20 in time to get you those originals?

21 A. The original notes was placed there after the
22 DX. She was focusing on DX which is why I focused on DX.

23 Q. The answer is no, you didn't tell her, hey, I
24 don't have time to get the original notes?

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1 A. Didn't word it that way, no. Okay.

2 Q. She knew you had the originals at home. She
3 still put down the original notes as a requirement. You
4 went to the doctor's and got the DX and the secretary to
5 copy them?

6 A. Actually, what she did is she wrote it on and I
7 made a copy from there.

8 Q. She wrote it on and then you kept that original
9 with her pen writing the DX code?

10 A. Yes.

11 Q. Then you submitted a copy?

12 A. She gave me a copy of the DX code that she did.
13 Yes.

14 Q. You gave it to Angelina. Did you mention that
15 you had to pick your daughter up that day?

16 A. Yes, I did. Because I also told her, "Can you
17 give this to Dawn for me? I need you to do this for me."
18 I went to Angelique. I seen her. She was the only
19 person that came to the door. I knew that Dawn would get
20 it. I knew Dawn would get it. But their offices are
21 like right there.

22 Q. Why would you have to tell Angelina that you
23 had to pick your daughter up later? Because you thought
24 you fulfilled the requirements.

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1 A. I'm missing your question.

2 Q. I still don't see why it's important that you
3 had to pick your daughter up early.

4 A. My daughter's school was letting out early.

5 Q. But didn't you already fulfill the requirement?
6 Didn't you already hand this note in thinking you did
7 everything you were supposed to do?

8 A. The way you just asked that question is not the
9 way that I'm interpreting it. Now, like I said, this was
10 given to Angelina. "I have to go. I have to pick my
11 daughter up." And that's the last I heard of it. Then,
12 like I said, that following week I received -- I think
13 that's the only time I received one of the things that
14 was certified stating that I was terminated on the 13th.

15 Q. Did you ever follow up with anybody to make
16 sure that you had the correct documentation?

17 A. I knew I had the correct documentation. Follow
18 up with whom?

19 Q. With Dawn or with anybody else in personnel.

20 A. I called -- what day was it? How did she word
21 it? "You might want to contact your shop steward because
22 your seniority was terminated." And that was on a
23 Monday.

24 Q. Hang on. Tell me about that --

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1 A. That was the call. When I called in. I can't
2 think of her name either. But that's how I found out I
3 was terminated before I got the certified letter.

4 Q. You made a call to Chrysler at some point
5 between May 13th and the time you got your term letter?

6 A. Yes. It was Monday, because I never heard
7 anything on a Friday. I called Monday morning.

8 Q. You called Monday morning, and why were you
9 calling?

10 A. Is there any other -- is there anything else?

11 Q. You did follow up?

12 A. Not so much follow up, but where would I go,
13 what did I do at this venue. I hadn't heard anything. I
14 passed this off. Wanted to make sure she had it,
15 checking, making sure everything was in.

16 Q. Did you call personnel?

17 A. Yes.

18 Q. Who did you talk to, do you remember?

19 A. I don't remember the girl's name. It was her
20 and -- don't even know her because she was kind of new.
21 She didn't have as much time. Or Angela. I knew Angela
22 because it was -- again, that's a know of, but I have
23 known her longer, seen her around, stuff like that.

24 Q. What did she tell you? You're calling in to

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1 check up on the status?

2 A. Check in, everything okay, what am I supposed
3 to do at this point.

4 Q. What did she tell you?

5 A. I was informed that I need to contact my
6 steward because my seniority was terminated on the 13th.

7 Q. Do you remember when the 13th was relative to
8 that call?

9 A. Friday, the 13th.

10 Q. It was Friday, the 13th?

11 A. Yes.

12 Q. Before we move on to your term letter and what
13 happened after that, one more time. When you came back
14 to talk to Angelina or Angela, you gave her this?

15 A. I gave her the one with the proper DX code.

16 Q. Exhibit 14 with the proper DX code?

17 A. Correct.

18 Q. But this Exhibit 14 was a photocopy?

19 A. Of a photocopy.

20 Q. Of a photocopy.

21 A. All right. A photocopy of a photocopy that had
22 her original DX code put on it that I photocopied to give
23 to her.

24 Q. Because you were keeping the original?

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1 A. Keep the original, yes.

2 Q. Even though you knew that Dawn was expecting
3 you to bring in the originals?

4 A. No. Again, this is something Dawn put in
5 there. It does not ask for my original. This is what
6 Dawn had wrote in there.

7 Q. But Dawn was the HR representative in charge of
8 administering the substantiation process, wasn't she?

9 A. But then again, again, I would have to say --
10 she was up front. I don't know what her title was, what
11 she was supposed to do. She was up front. Like I said,
12 this one wasn't signed because from here, like I said,
13 you already have it all marked up and everything. It's
14 like you're putting this, that, and the other in here.
15 Wait a minute. You asked me for the DX code. I'm going
16 to get the DX code. This, I have to say I never received
17 this because I know I didn't sign and there's no
18 signature right there. This would have to be that one.

19 Q. You didn't receive it, but you have seen it?

20 A. I seen enough of it to know that I couldn't
21 sign it. You're sitting here, you're changing the
22 program right in front of me.

23 Q. Yes or no --

24 A. If able.

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1 Q. Yes or no, okay? Did you know that Dawn
2 required you to bring in original notes? Whether or not
3 you agreed with that, whether or not you thought it was
4 consistent with anything else, did you know that she told
5 you that day you need originals?

6 A. She did not tell me that day. Like I said, I
7 didn't sign it. So I can't sit here and say I received
8 this.

9 Q. You didn't receive it, but you knew that this
10 was one of the requirements, original notes?

11 A. I knew she wanted the DX code. That I knew.
12 There was never ever a problem. She touched on it and
13 there's never been a problem with it. That's why I'm
14 thinking she switched over to DX code because it was like
15 she was looking for any discrepancy possible on this
16 thing.

17 Q. As you're sitting here today, you are telling
18 me right now that during that entire conversation that
19 you had with Dawn she never mentioned that you had to
20 bring in original notes?

21 A. She did not say I needed to bring in my
22 original notes.

23 Q. She did not say that once?

24 A. She did not say I needed to bring them in. I

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1 never had a problem with these before.

2 Q. She may not have said it, but you saw this
3 document before you left that day to go to your doctor?

4 A. I seen enough of that document to know that I
5 was not signing that document because it had been
6 altered.

7 Q. Right, but you saw that this was the entry on
8 this document that said "original notes"? You saw that
9 because you saw the document?

10 A. I seen enough of that document that I was not
11 signing it.

12 Q. You saw enough of the document. Yes or no, did
13 you see this document before you left for your doctor's
14 office? Yes or no?

15 A. Did I see it? No, I did not read it.

16 Q. Did you see it?

17 A. I seen enough of it. What I'm telling you is
18 it was marked here and I was pretty much done by the time
19 you got here.

20 Q. Now you're telling me you had no idea that you
21 needed to bring in original notes. Is that what you're
22 telling me?

23 A. She's telling me that there's no -- let's see,
24 there was a problem with the DX code. The DX code was

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1 the only thing that was shy on the notes I presented.

2 Q. One more time. Yes or no, did you know that
3 day about this entry on this sheet before you left to see
4 Dr. Bandera? Did you know about it?

5 A. No.

6 Q. You had no idea that this was one of the
7 requirements that Dawn wanted you to bring to
8 substantiate your injury on that day, no idea?

9 A. Again, we had crossed that bridge already.

10 Q. Who had crossed that bridge?

11 A. Dawn and I had crossed that bridge already.

12 Q. When?

13 A. She focused on the 13th. That's why she
14 focused on the DX code. The DX code is the only thing
15 that was shy which is why I focused on the DX code.

16 Q. When did you focus --

17 A. On the 13th.

18 Q. How did you cross that bridge before? What do
19 you mean by that?

20 A. It's personnel. I gave her what I have. She's
21 like, well -- what was it? First it was why I did not
22 show up on the doctor's appointment. Obviously I have
23 another doctor's appointment. I'm here. So I got that
24 one. Then the notes. These are the notes. "Where are

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1 your originals?"

2 "My originals are home, but I have always
3 submitted these."

4 Q. She did say where are your originals?

5 A. She left it at that because these are copies of
6 the originals.

7 Q. So she asked you, "Where are your originals?"
8 You said, they're at home.

9 A. Yep.

10 Q. And then she made this entry on here and she
11 never told you --

12 A. I don't know when she made the entry. Like I
13 said, I was done with it pretty much up here.

14 Q. She never told you that you needed originals?

15 A. Never said I need my originals, bring the
16 original in, no.

17 Q. But you had an opportunity to look at this
18 document?

19 A. I had enough of an opportunity to know that I
20 wasn't signing it, and I didn't look it over fully, no.

21 Q. But you could have?

22 A. Could have accepted it as how she did, but she
23 didn't.

24 Q. We're talking about you. Tell me again why you

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1 wouldn't sign this document.

2 A. Because it's been altered.

3 Q. Because she made these changes?

4 A. Uh-huh. Says "Reinstatement Denial." Now it
5 turns to "Substantiation Denial."

6 Q. You were saying that she was harping or
7 focusing on the DX code?

8 A. Yes.

9 Q. If all that was at issue here was getting the
10 DX code, what was the big problem with this document?
11 Why didn't you take it, and why didn't you sign it?

12 A. Kind of the way I was trained. If an
13 individual alters something like that, I can't sign it
14 because it's not -- I'm signing -- this says
15 "reinstatement." This says "substantiation." This is
16 proper form. This is her form. That's why I did not
17 sign it.

18 Q. Do you know if there's a substantiation form?

19 A. Do you know she has the legal authority to
20 change forms?

21 Q. I'm asking the question, okay?

22 A. Excuse me. If we're going to do this.

23 Q. Let's just focus on this for one second. Do
24 you know if there's a substantiation denial form? Do you

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1 know if that form exists at Chrysler?

2 A. I know there is not a substantiation/
3 reinstatement form.

4 Q. But had you ever gotten one that said
5 "Substantiation Denial" at the top? Do they have an
6 official form like that?

7 A. That I don't know. If that is truly the case,
8 it would have "substantiation" there and not crossed out.
9 This is something that someone did. This is not
10 generated by the Chrysler Corporation.

11 Q. Is it possible that she just didn't have a copy
12 of the correct form and just modified this one to help
13 you out?

14 A. Perhaps -- obviously she wasn't trying to help
15 me out.

16 Q. Why not?

17 A. Why? She wanted DX and obviously wasn't trying
18 to help or wasn't granted even a 24-hour thing. If you
19 had a problem with anything I had, I could have brought
20 it in there. You chose to terminate me on the 13th the
21 exact same day.

22 Q. What reason would she have --

23 A. What reason would she have to help me? There
24 you go.

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1 Q. What reason would she have to try to be out to
2 get you either? You didn't know her, right? You guys
3 were strangers?

4 A. For the most part, yes, we are. I know her
5 probably as she knows me. That's the extent of it.

6 Q. She didn't give or try to give this to you as a
7 way to help you figure out what you needed?

8 A. She was telling me what she needed. She told
9 me DX. That's what I did.

10 Q. You submitted a photocopy of a photocopy with
11 the DX codes on it to Angelina?

12 A. That would be correct, yes.

13 Q. Let's see. And then you called personnel on
14 Monday to check if they had everything.

15 A. To make sure she had everything, because I
16 tried calling Friday and never got an answer. With these
17 crazy hours, you can't barely get through to them anyway.
18 And then that's when I was informed contact my shop
19 steward guy, so on and so forth.

20 Q. Did you do that?

21 A. Yeah.

22 MS. WASSON: Can you mark this as 15,
23 please?

24 (Smiley Deposition Exhibit No. 15 was

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1 marked for identification.)

2 BY MS. WASSON:

3 Q. Do you recognize this document?

4 A. This is the one that's dated the 13th.

5 Q. Did you receive this?

6 A. Yes, I have that. Yes. Certified. Just like
7 I said, it was the only one I have ever received that was
8 certified.

9 Q. Do you know who made the final decision to
10 terminate your employment?

11 A. That I can't tell you. I don't know. I'd have
12 to say it started and ended there.

13 Q. But you don't know for sure?

14 A. No, I don't. I don't know what the hierarchy
15 is there as far as HR. I have no experience in HR.

16 Q. You believe your termination was discriminatory
17 on the basis of a disability?

18 A. Okay. Well, let's see. Again, we have already
19 gone over the Yankee thing. He put me on something that
20 causes me to aggravate the injury again. Even with this
21 letter here, you were issued a substantiation denial
22 form.

23 Q. When you say that --

24 A. This is what's written here.

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1 Q. Okay. We're looking at the letter.

2 A. At the letter. No. 15. It says that I was
3 issued a substantiation denial form. No. I was
4 presented with a reinstatement denial form that had been
5 modified to include "substantiation." Totally two
6 different forms.

7 Q. Okay. You think -- tell me how that is
8 discriminatory on the basis of your disability.

9 A. Well, like I said, as far as this, that would
10 be closer to a retaliatory, but we're not even going to
11 address that at this time. This, as far as -- again,
12 this right here, we already know, right hand, it's my
13 right elbow. You have me doing a job that is aggravating
14 and occurred on your premises to my right elbow. There's
15 nothing in this PQX that states anything regarding my
16 right elbow. I'm sorry. Right hand. There's nothing in
17 there for my right hand.

18 Q. There's nothing in this PQX that states
19 anything about your hand?

20 A. No lifting over. If I'm doing no repetitive
21 twisting of wrist, does repetitive include an up-and-down
22 movement to utilize a Yankee?

23 Q. You're asking me to answer that?

24 A. You said you asked the question. This

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1 statement is in the form of a question. For this reason
2 and these reasons right here, repetitive twisting of
3 wrist. I'm using a plunger motion with an arm that has
4 been injured by doing repetitive operation. All they
5 succeeded in doing was aggravating the situation that was
6 already there that was caused by them.

7 Q. You do admit and you told me before that you
8 could have used your other arm. You weren't as fast with
9 the other arm, but you could have done it?

10 A. That brings about other things. Then there's a
11 work product issue. There's a time issue. Along that
12 particular line, it's not like right side door fitting
13 where I can go maybe as far as that wall there to
14 complete that task. I may be changed to about right
15 here. Now I have to stop doing everything, plunge it in.
16 Either which way, it would become a work issue. It would
17 become a work product issue. I'm trying to keep hassle
18 off of me.

19 Q. Had it become a work product issue when you
20 were doing it with your left hand?

21 A. No. It would become one. I'm telling you, it
22 would become one, because I'm not as efficient with my
23 left as I am with my right.

24 Q. But you never told your shop steward or anybody

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1 about that concern, that you were worried about your work
2 productivity because you were on this new job and you
3 were trying to do it with your other hand?

4 A. Yeah, I'm going to try. I hate to use the
5 term, that's the nature of the beast. If this is what
6 I'm to do, this is what I'm going to do. I'm going to
7 try to do it the best I can.

8 Q. Can we go back to your termination?

9 A. Sure.

10 Q. I understand what you're saying about the left
11 fender install.

12 MS. BRADY: Can we can off the record?

13 (Discussion off the record.)

14 (The deposition was adjourned at 1:15 p.m.)

15 (Deposition to be continued.)

16 - - - - -

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T E S T I M O N Y

DEPONENT: DAVID A. SMILEY

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BY MS. WASSON..... 2

E X H I B I T S

SMILEY DEPOSITION EXHIBIT NO.

MARKED

1 - Three-page job description..... 9
2 - Letter dated October 26, 2004..... 52
3 - Letter dated 11/1/04 from Dr. Bandera..... 58
4 - Letter dated February 7, 2005..... 63
5 - Document Bates stamped Chrysler 106..... 65
6 - Job description..... 67
7 - Memo dated February 2, 2005..... 78
8 - Medical pass..... 81
9 - Charge of Discrimination..... 87
10 - Letter dated May 6, 2005..... 90
11 - Information Notice..... 93
12 - Substantiation Denial..... 98
13 - Photocopy of four prescription slips.... 100
14 - Photocopy of four prescription slips.... 108
15 - Letter dated May 13, 2005..... 128

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REPLACE THIS PAGE

WITH THE ERRATA SHEET

AFTER IT HAS BEEN

COMPLETED AND SIGNED

BY THE DEPONENT

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CERTIFICATE OF REPORTER

STATE OF DELAWARE)

NEW CASTLE COUNTY)

Kimberly A. Hurley, Registered Professional Reporter and Notary Public, do hereby certify that there came before me on the 9th day of April, 2008, the deponent herein, DAVID A. SMILEY, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed by use of computer-aided transcription and computer printer under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

Kimberly A. Hurley
Kimberly A. Hurley

Certification No. 126-RPR
(Expires January 31, 2011)

DATED: April 10, 2008

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WILCOX & FETZER LTD.

In the Matter Of:

Smiley

V.

DaimlerChrysler

C.A. # 1:07-005 SLR

Transcript of:

David A. Smiley

Volume # 2

April 15, 2008

Wilcox and Fetzer, Ltd.
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Internet: www.wilfet.com

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

DAVID A. SMILEY,)	
)	VOLUME 2
Plaintiff,)	
)	
v.)	C.A. No. 1:07-005 SLR
)	
DAIMLER CHRYSLER,)	
)	
Defendant.)	

Continued deposition of DAVID A. SMILEY
taken pursuant to notice at the law offices of Potter
Anderson & Corroon, LLP, 1313 North Market Street,
6th Floor, Wilmington, Delaware, beginning at 9:15 a.m.,
on Tuesday, April 15, 2008, before Kimberly A. Hurley,
Registered Merit Reporter and Notary Public.

APPEARANCES:

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1 DAVID A. SMILEY,
2 the witness herein, having first been
3 duly sworn on oath, was examined and
4 testified as follows:

5 BY MS. WASSON:

6 Q. Good morning, Mr. Smiley.

7 A. Good morning.

8 Q. We are back again for the continuation of your
9 deposition.

10 A. Yes.

11 Q. You were just sworn in, so you know that you
12 are under oath.

13 A. Yes.

14 Q. And the same ground rules are still going to
15 apply that we talked about when we first started on
16 Thursday or Friday of last week.

17 Also, have you had any medications or
18 anything today that would influence your ability to
19 testify?

20 A. No, ma'am.

21 MS. WASSON: Can we go off the record?
22 (Discussion off the record.)

23 BY MS. WASSON:

24 Q. Mr. Smiley, I think we last stopped by talking

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1 about your termination and the reasons why you thought it
2 was discriminatory. We will go back to that in just a
3 second, but I wanted to make sure the record was clear
4 with regard to one of our exhibits. I believe last time
5 we were talking about Exhibit 13, which it says
6 "Substantiation Denial" and part of this is handwritten
7 at the top.

8 A. Yes.

9 Q. I just want to make sure the record is clear,
10 because I think by the end of our time last time we were
11 sort of saying "this document" and "that document" and we
12 want to make sure that for the record the paper
13 transcripts reflects which documents we were talking
14 about.

15 A. Okay.

16 Q. Exhibit 13 that says "Substantiation Denial" at
17 the top, this was a document that Dawn filled out --

18 A. Yes.

19 Q. -- when you reported to the plant on May 13th?

20 A. Yes.

21 Q. Were you offered a copy of this document?

22 A. I was shown a copy -- I guess I could say I was
23 offered a copy, but because of the alterations that were
24 done to it, that's why I didn't sign it and I didn't

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1 accept it.

2 Q. I just wanted to make sure the record was clear
3 about this particular document.

4 A. No problem.

5 Q. Going back to your termination, you started to
6 explain to me when we took the break why you thought your
7 termination was discriminatory on the basis of your
8 disability. Can we talk about that some more?

9 A. Well, basically, from what I remember, what she
10 had shown me, it was -- I was basically -- what was it,
11 the left side fender install and that's where -- that's
12 where we were and I was saying it was discrimination --
13 discriminatory because I still had to use my right arm to
14 perform the job.

15 Q. How did that relate to your termination?

16 A. How did that -- actually, it doesn't I would
17 assume because one is a different avenue than the other.
18 The other was I guess Chrysler's attempt at a -- what's
19 the word we're looking for? An accommodation, versus
20 this.

21 Q. So that left fender install position you're
22 saying has to do with the evidence for your
23 failure-to-accommodate claim?

24 A. That would be correct.

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1 Q. Let's talk about that for one second. You
2 think the left fender install job was not an appropriate
3 accommodation?

4 A. Well, considering that my PQX did state the
5 movement of the right arm, and I was mistaken about the
6 hand part, but the right elbow, but the hand, elbow is
7 right there. If you're going to make an accommodation
8 and the job that I am to perform still involves using the
9 same limb that's in question, it's not really an
10 accommodation.

11 Q. After that left fender install job, your doctor
12 put you out on leave?

13 A. That's correct.

14 Q. What should Chrysler have done after you
15 couldn't do the left fender install? What could they
16 have done to make it better or make it nondiscriminatory,
17 in your view?

18 A. In my view, if they were to consult me as far
19 as, you know, how the job is set up. Again, I wasn't
20 consulted. I was just placed there. I had no input
21 whatsoever as far as what job I was going to be on, how I
22 was to perform it, like that.

23 Like I said, it also could have a
24 combination of inadequate training because, like I said,

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1 in a lot of cases when you're put on a job, you will do
2 it -- and this is shop talk -- do about three jobs and
3 you're on your own. In that aspect, also.

4 But more so I'm still using the affected
5 limb that got me on the PQX list in the first place. I'm
6 still using that, so it's kind of -- it just doesn't
7 quite mesh to me.

8 Q. Is there a position at Chrysler that you feel
9 that you should have gotten instead of left fender
10 install?

11 A. I'm not going to say I should have gotten
12 because like I said again, you look at seniority, you
13 look at availability, shift availability, first, second,
14 as qualified for driving, I wasn't made a driver. I'm
15 qualified for other things. That was not put there to
16 basically put me -- I hate to use "demote," but it is
17 what it is. Put me back on the line in a situation -- on
18 a line situation under the guise of an accommodation.
19 Like I said, all it succeeded in doing was aggravating
20 the situation that was there.

21 Q. You feel like that was a demotion?

22 A. "Demotion" may be too strong of a word. I use
23 "demotion" to say coming from a tech 1 going back to a
24 tech 2 job, it could be construed as a demotion, if you

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1 will.

2 Q. Did you keep your same pay rate?

3 A. Yes, I still had the same pay rate. I don't
4 even think they gave me the shift differential when I
5 went back because originally I'm on first shift, so going
6 back to that and though it did last a week, I'm not even
7 sure if I got the shift differential, also. So there's
8 been that time. And like I said, early on when I was
9 going to therapy, it was like three times a week, two,
10 three times a week, and leaving Chrysler early, and I was
11 never compensated for that either. You kind of like take
12 it and just go on.

13 Q. Let me break that down a little bit. So you're
14 talking about the shift differential.

15 A. Yes. I mean, it's a few dollars, but still, I
16 mean, if you're there, that's what you're supposed to
17 receive.

18 Q. The shift differential, I want to make sure I
19 understand Chrysler's procedures because I'm not too
20 familiar with the shift differential.

21 A. Let's say -- these are not accurate figures,
22 but let's say first shift would pay you \$5. Shift
23 differential on second shift would be just a guesstimate
24 maybe \$5.75, something like that. It's a little bit, but

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1 it's more or less the principle of it, if it's supposed
2 to be there, it's supposed to be there. That's just an
3 example. It's not an accurate portrayal.

4 Q. I understand that.

5 You'd essentially get a little bit more --

6 A. Yes.

7 Q. -- for working the second shift?

8 A. Yes, ma'am.

9 Q. For doing that.

10 A. Yes, ma'am.

11 Q. Do you know for sure whether you were paid that
12 shift differential?

13 A. That I cannot tell you -- I cannot -- I don't
14 remember at this point. I'm not really sure. I'm just
15 saying for the question that you asked, this all falls
16 into that answer.

17 Q. If, in fact, you didn't get it, that would be
18 something that you would say would be evidence --

19 A. We could look at that, too. I wouldn't say
20 maybe perhaps evidence, not as strong as the fact that
21 I'm doing left side fender. Shift differential, that's
22 more of an administrative type of thing, payroll type of
23 situation.

24 Q. Do you know whether Chrysler has a policy of

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1 paying the shift differential if you're doing the job
2 based on the PQX process, if you're placed there for a
3 PQX accommodation?

4 A. That I do not know. I do not know.

5 Q. We talked about the pay differential, and then
6 was there something else that we talked about that had to
7 do with you going from tech 1 to a tech 2 job?

8 A. Well, I used the word "demote." I did use the
9 word "demote." Like I said, maybe perhaps a little bit
10 strong, but I am a tech 1. I was moved to a tech 2
11 position.

12 Let's see, what else? Like I say, I was
13 never queried as to even if I could do the job. You had
14 asked did I speak to anyone. No one had spoken to me. I
15 wasn't made a part of the process to put me there. It
16 was basically, this is what you're going to do, see you
17 later.

18 Q. You continued to accrue seniority in the tech 2
19 job, right?

20 A. Yes, I was still accruing my seniority.

21 Q. For purposes of personnel matters, were you
22 still classified as a tech 1?

23 A. Yes, ma'am. That's the job that I got hurt on
24 when I went on disability in the first place. I hadn't

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1 been bumped from that position; therefore, I would still
2 be a tech 1.

3 Q. The PQX process, the union representation was
4 available at the PQX process. The union weighed in on
5 the PQX committee?

6 A. I would have to assume that they did. I was
7 not there. I was not a party to that conversation or any
8 conversation, for that matter, pertaining to a PQX.

9 Q. As a general rule, is the union involved in the
10 PQX process?

11 A. Supposedly.

12 Q. Did anyone from your union ever talk to you
13 before they had the PQX meeting about you?

14 A. No.

15 Q. Do you know if that would be a normal thing
16 that the union would do?

17 A. That was not exactly my area of expertise, so
18 again, if you're going to place an individual, it would
19 seem that you would speak with this individual and get
20 some type of feedback, at least some type of
21 back-and-forth so everyone knows where everyone is.

22 Q. Any other reason why you think that the left
23 side fender install position was discriminatory or a
24 failure to accommodate?

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1 A. Outside of the training, the job itself, at
2 this moment or as we sit, that's all I can think of at
3 this moment.

4 Q. Do you know how much training someone in a PQX
5 placement would normally get for their accommodated
6 position?

7 A. It's not as much as, to my knowledge, that they
8 differentiate in the training. Like I said, it depends
9 on the coordinator. You have some coordinators that will
10 stay there and help you out. You have other
11 coordinators, okay, you have done the operation two
12 times, that's enough. It's sort of a case-by-case.
13 Actually is up to the coordinator. That's not the way
14 that we taught them to do it, but they sort of take a
15 free rein in doing it whichever way they want to.

16 Q. You were the facilitator instructor?

17 A. I was one of them.

18 Q. Were you responsible for helping the trainers?

19 A. No. I trained coordinators myself.

20 Q. You trained the coordinators.

21 A. I trained coordinators, disseminating
22 information, and, like I say, I gave you an example, I
23 believe. I flew out to St. Louis, I got the workplace
24 violence information, we brought it back, regurgitate it

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1 to the plant.

2 Q. Do you remember who your coordinator was?

3 A. No. No, because he was a second-shift guy. I
4 don't know him. I can't think of him right now anyway.

5 Q. If you were trained and you decided that you
6 didn't have enough training to enable you to do your left
7 fender job, could you contact the coordinator or could
8 you approach the coordinator and say, hey, you know, I'm
9 having a hard time with this or I can't figure out how to
10 do this specific thing that you told me, I'm not getting
11 it? Is it an open-door policy where you could come back
12 to that coordinator if you had questions?

13 A. Yes, you can. In the real-world scenario, you
14 have to catch him first because he has up to 20 other
15 individuals that he has responsibility for and other
16 functions that he has to fulfill.

17 Q. Do you remember how much training that you
18 actually did have to do the left fender job?

19 A. It wasn't long. Maybe an hour or two hours.
20 Few operations.

21 Q. Is the coordination done through the union or
22 is that a Chrysler function?

23 A. That's done through the union. It's through
24 the union. It's also part -- falls under the MOA, modern

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1 operating agreement, which basically coordinators are
2 elected by each respective team. At that point they are
3 trained and we pretty much turn them loose; let them
4 fulfill their job.

5 Q. Under the modern operating agreement, between
6 the management and the union?

7 A. Yes.

8 Q. The training of someone for a new position,
9 that's a union function?

10 A. Yes, that would fall under a union function.

11 Q. If you wanted to complain about the training
12 you received, would you go to the union, would you go to
13 your shop steward or your committee man?

14 A. What you would do first, you would -- you could
15 go to your shop steward. I guess you could go to your
16 shop steward. Steward, committee man is last-ditch
17 effort, if you will.

18 Q. Is committee man higher than shop steward?

19 A. Yes.

20 Q. Does shop steward represent all of the
21 employees at that particular facility or is it broken
22 down into you have a shop steward for trim, one for body?

23 A. That's correct, yes.

24 Q. The latter one?

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1 A. The latter. The latter, not the former.

2 Q. Got you. We talked about training. We talked
3 about the job itself. Have we covered all the ground you
4 can think of for failure to accommodate at this point?

5 A. Training, we can go with the inadequate
6 training, we could go with the job itself, we could go
7 with -- something else I said.

8 Q. Demotion?

9 A. Like I said, it's a strong word. That's the
10 only word I could think of at the time, but you're going
11 from a 1 to a 2. You start out as a 2. If you're good
12 enough and lucky enough, you get to be a 1. To go back
13 when you're qualified to drive vehicles, when you're
14 qualified like finish where I am, body shop, the argument
15 could be made that we couldn't find him anything, but at
16 the same time the argument can also be made that, yes,
17 you could if you decided to.

18 Q. Basically, if I understand you correctly,
19 you're telling me that really the accommodation should
20 have stayed in a tech 1 level job?

21 A. And that's the other side of it. I say that it
22 could have. I don't know if they have a PQX for a
23 tech 1. That aspect of it I'm not really sure. I didn't
24 delve in that area. What I had learned and what I was

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1 teaching is a totally different monster.

2 Q. It may be possible, may be, that they looked at
3 the tech 1 positions and because of the seniority and the
4 bumping and the way that they do the process across the
5 board, that there wasn't a tech 1? Is that possible?

6 A. I wasn't party to that conversation, so I
7 cannot answer that affirmatively.

8 Q. Did you know of any tech 1 positions that were
9 open or that would have fit the bill under the PQX
10 process? I know you said you don't know exactly how they
11 do it.

12 A. Now, as far as PQX and a tech 1, again, there
13 have been incidents where you had individuals with less
14 seniority that were on day shift and remained on day
15 shift. So it's -- I say you probably could if you chose
16 to do so, you may have been able to find me something.
17 Again, I was not privy to that information, nor
18 conversation; therefore, I can't affirmatively answer
19 your question.

20 Q. Okay. That's fair.

21 Should we move on to termination? We can
22 talk about failure to accommodate more if you feel like
23 there's more you want to tell me.

24 A. At this point I believe we pretty much covered

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1 it. We can go on to termination.

2 Q. By the way, I just wanted to see if we could
3 clarify your dates of injury and dates of leave.

4 Remember how we were thinking about that?

5 A. I'm not really sure how that --

6 Q. That's okay.

7 A. You found something?

8 Q. I think so. I actually found it in an exhibit
9 that we have already introduced, Exhibit 3, which I'm
10 just going to put in front of you again. I know we
11 already looked at this, but I think this might help us
12 figure out when your injury occurred, because see how it
13 says --

14 A. March '04.

15 Q. -- he's been disabled since March of '04 and
16 continues current disability, and down at the bottom it
17 says it's the elbow, DCX code.

18 A. Uh-huh. I understand where you're at with
19 that. DCX code 726.32.

20 Q. That probably means that it was September of
21 '03 or October of '03, right?

22 A. Yes, quite possibly. I mean, this is my
23 physician, this is his signature, this is his letterhead;
24 therefore, I'd have to say he's been in it as long as I

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1 have been in it.

2 Q. I guess it's safe for us to conclude that it
3 would be October of '03?

4 A. Yes.

5 Q. And not of '04?

6 A. Yes. Because it was nearly the end of the
7 year, and that has always been a source of we're all
8 scratching our head on that. It's not just you.

9 Q. It was a long time ago at this point. I just
10 wanted to see if that helped any because I know we were
11 kind of fumbling back and forth last time.

12 A. I admit I am not exactly sure of the correct
13 date; however, after viewing that, it is highly likely --
14 like I said, he's my physician, so he would know.

15 Q. Right. If I can find anything else conclusive
16 that we have in the exhibits, I will certainly draw it to
17 your attention, but I think that really helps shed light
18 on it.

19 A. Yes.

20 Q. Moving on to termination, right?

21 A. Okay.

22 Q. If we're talking about the mechanics of the
23 termination and the things that led up to the
24 termination, tell me about why you think that you were

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1 wronged with regard to your termination.

2 A. Okay. Again, I was given a form that had been
3 altered. I was not afforded 24 hours if there were any
4 type of discrepancies to clarify that. I was terminated
5 on the 13th, that same day. I did show up, again, twice
6 on the 13th. The copies that I have are copies of the
7 original notes. Again, I would look to the call-out
8 numbers. They would be the numbers on each individual --
9 if you have one in front of you. But I think it's like
10 maybe a nine-digit train of numbers at the bottom. It's
11 called a call-out number. What happens there is you call
12 and they assign you a number. There you go.

13 Q. Do you want to look at -- I think this was
14 Exhibit 14.

15 A. These are the call-in numbers. See right here?
16 That's in my hand. You have a call-in number there, you
17 have a call-in number there, you have a call number
18 there, and you have a call-in number there.

19 Q. Tell me again the call-in number, why that's
20 important.

21 A. What happens is the absentee program, if you're
22 going to be out, you know you're going to be out, the
23 last policy change that I can remember, they requested
24 that you call in, you were to receive this number. I

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1 have never been questioned on the number or what have
2 you.

3 Q. Is it like your ID number for your absence or
4 something?

5 A. For that particular absence. It would be like
6 you call in and you give your reasoning for whatever,
7 they assign a number. I don't know how that number is
8 generated, the mechanics of that, but that is the way it
9 works.

10 Q. When you call in, you're supposed to provide
11 them with that number?

12 A. No, they provide you. They provide you with
13 the number. What you do -- well, what I like to do on my
14 notes, I would write the call-in number on it, on each
15 corresponding note; therefore, I knew which one applied
16 to where.

17 Q. I see. So these are all different numbers --

18 A. Yes, ma'am.

19 Q. -- for each of the notes?

20 A. Yes, ma'am.

21 Q. The reason why the call-in number is important
22 is because --

23 A. The purpose of it is to call in before your
24 shift. It would notify your supervisor, okay, he's going

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1 to be a man short, so he can make whatever accommodations
2 he needs to make, whatever switches he needs to make,
3 between he and his coordinator, find someone. If not,
4 the coordinator himself could perform the job until
5 either someone comes in late, the individual comes in, or
6 we can find someone in a pool and have -- forgive me on
7 that. Force of habit. I have been doing it too long..

8 Q. Not a problem.

9 A. Till another individual can be found.

10 Q. Right. I understand. I guess we can talk
11 about each of those reasons that you gave, because you
12 kind of ticked off a few here.

13 You think that the termination was
14 discriminatory. Do you think one of the reasons why is
15 because Dawn altered the form?

16 A. That would be the major reason. Again, I was
17 not afforded 24 hours if there were any discrepancies to
18 correct said discrepancies. That's pretty much it.
19 That's pretty much it, because everything else according
20 to their guidelines were there.

21 I would have to also say if Chrysler does
22 reserve the right if they feel as though something was
23 altered and what have you, if an investigation was not
24 performed to get to the truth of the matter and you just

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1 sort of slide it under the table, yes, because you did
2 not afford me that right to respond. Maybe this is the
3 wrong context to use "right to respond"; however, if
4 there was a discrepancy that you truly had a problem
5 with, allow me the opportunity to correct it.

6 Q. Some of this that we're talking about now has
7 to do with our discussion before about what was required
8 and what Dawn wrote on the form and that sort of thing.

9 A. Yes. Because it's part of the requirements,
10 basically. There's no rubber stamp. You see the
11 physician's signature, it's on his letterhead, address,
12 telephone number. The only thing was shy would be
13 perhaps DX code, which I retrieved.

14 Q. Can you look at Exhibit 13 again, the
15 substantiation denial?

16 A. Sure.

17 Q. I know we talked about that a lot the last
18 time, and we spent a lot of time talking about original
19 notes. I want to clarify the situation, because I think
20 we started talking about that and we kind of kept going
21 over and over it and I want to make sure that I
22 understand exactly what happened from your perspective
23 under oath, what happened with regard to who said what
24 about original notes... Okay? I know we have already

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1 tread that ground, but I just want to make sure the
2 record is clear, because you know how we kept going back
3 and forth and we were talking a lot about it.

4 When you came in that morning, you reported
5 pursuant to that letter that you received that was
6 already entered into the record and you encountered
7 Dawn Ford?

8 A. Correct.

9 Q. You gave her your photocopy notes?

10 A. Yes.

11 Q. They had --

12 A. They had the requirement -- the physician's
13 name, address, letterhead, written in his signature, no
14 facsimile copies, no rubber stamps for his signature, the
15 dates that you're going to be absent from and to. Again,
16 the only thing my copies had not shown was a DX code.

17 Q. You hand them to Dawn?

18 A. Yes.

19 Q. Did Dawn want original notes at that point when
20 you first made contact with her and you first started
21 talking about this?

22 A. Notes kind of came up a little later, the
23 original, because again, you can see that these were
24 originals. You can look at the dates, the call-in

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1 numbers and see these are originals. You can't pull
2 these out of the air like that. Again, if you truly
3 wanted to investigate the dates in question, you would
4 look at the corresponding call-in number, there's a
5 record right there.

6 Q. I think when we previously met, you were
7 telling me that the first thing that you all talked about
8 was you missed your appointment. She said, oh, you
9 missed your appointment. You said, hey, I didn't know
10 about that.

11 A. I didn't know about that, and I figured that
12 was a done deal because when it was mailed to me, I did
13 receive it, I did show up. I have only missed one
14 appointment since this whole ordeal begun.

15 Q. That was the first thing?

16 A. Yes.

17 Q. How did the conversation turn from there?

18 A. She was looking at these. She was like, your
19 original -- I don't have my originals with me, I have the
20 copies right here. Well, you don't have the DX code.
21 And that's where we focused on the DX code.

22 Q. Did she say, these are not originals, I need
23 the originals? What did she tell you?

24 A. What the exact words are, they elude me.

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1 However, again, you can see that these were original
2 notes which is basically I believe, I could be wrong, why
3 she decided to go to the DX code. You can see that these
4 are originals.

5 Q. I'm just trying to understand, because she's
6 not in the room. I'm trying to understand sort of
7 secondhand what she said to you about the originals. Do
8 you remember? I don't need exact words. What I want to
9 know is she brought that up as an issue, right?

10 A. She asked did I have the original. I said I
11 had the copies, these are the copies here. She harped
12 more on the DX than anything else. The note, I guess,
13 would be you could say sideshow. Then it came back with
14 the original notes. It's like, you're altering this
15 thing here and you expect me to sign this. I mean, no.

16 Q. She first --

17 A. This was right before I left to get the DX
18 code. This was right before I left.

19 Q. First part of the conversation was about missed
20 appointment. You guys got over that.

21 A. Yes.

22 Q. Then she says, where are your original notes?

23 A. Okay. After she looked these over. Again, I
24 said, right here, basically, here you go, because these

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1 are copies of the originals. I mean, you can look at
2 them and tell they're the copies. Again, I figured that
3 was done. She didn't say anything else about it. She
4 focused upon the DX code, and, understandably, that was
5 the only information that was shy. Initially.

6 Q. Got you. You start out talking about the
7 original notes. She asked you where they are. You say,
8 hey, these are copies of the originals. And then does
9 the conversation move on to DX code?

10 A. That's correct.

11 Q. At that point in time before the conversation
12 moves on to DX code, did she ever say, I need the
13 originals?

14 A. She did not say she -- her exact words I do not
15 believe were "I need the originals." I do not believe
16 she said that.

17 Q. Did she say anything, well, you have to bring
18 the originals?

19 A. Nothing like that that I can remember, no.

20 Q. You ended up telling her that the originals
21 were at home?

22 A. Yeah. I don't carry my originals with me.
23 That was part of that conversation, do you have the
24 originals, no, this is what I have, I don't carry my

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1 originals with me, all the information that you would
2 need is right there. Then it was, okay, well, I need the
3 DX code. You have me there because I did not know the DX
4 code. I left the plant, I went to Bandera's office, his
5 secretary wrote the proper DX code on one of my copies, I
6 brought it back, I submitted it to Angelina, Angeline,
7 her, I gave it to Angelina, and I knew it would get
8 forwarded to Dawn, knew it was going there. Obviously it
9 didn't.

10 Q. You guys started talking about the DX code?

11 A. Uh-huh.

12 Q. Does she talk about any other substantiation
13 requirement that you need to get after you talk about DX
14 code?

15 A. I told her I would go get the DX.

16 Q. She takes a piece of paper out?

17 A. She started with this and, again, you cross
18 out --

19 Q. Hold on one second. When you say "this," you
20 mean Exhibit 13, the substantiation --

21 A. The substantiation and reinstatement form which
22 has been altered to include substantiation. She had
23 struck "reinstatement," substituted it with
24 "substantiation." Again, on the third paragraph, again,

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1 other than that, return-to-work date or estimate of
2 return-to-work date. Again, handwritten items.

3 Q. So she starts using a form that wasn't
4 particularly suited to the one that you would need,
5 right?

6 A. You could say that, yes.

7 Q. She's crossing things out and she's writing in
8 in handwriting some additional requirements that are not
9 appearing on this typewritten form?

10 A. Yes.

11 Q. You saw her writing in these requirements,
12 right?

13 A. Uh-huh.

14 Q. What did she do, hand this over the counter and
15 try to give this to you?

16 A. She's like, I need you to sign this. I'm like,
17 I'm not signing it, you altered it. I mean, if you're
18 going to get picky about it, she didn't even initial it.
19 She just altered it.

20 Again, I have never had a problem with this
21 procedure prior. So somewhere in there lies the point of
22 contention that perhaps maybe we just -- I don't know the
23 woman. I know of her. But like I said, you can just see
24 I'm not going to sign anything like that. It's been

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1 altered. It was like basically why don't you give me a
2 blank sheet of paper, I'll sign my name to it, and you
3 fill it in as you feel. Basically it's the same thing.
4 You do not agree to it, you do not sign it.

5 Q. She basically handed it to you. You said, I'm
6 not signing this because it's been altered. What did she
7 do after that?

8 A. She ranted about something. I kind of tuned
9 her out at that point. I focused on the DX code. I told
10 her I will be back, which I did. At the time this was
11 about 10:12 a.m., so minutes after this when I proceeded
12 to go to Dr. Bandera's office to get the DX code.

13 Q. Did she try to kind of shove this at you and
14 make you take a copy of this?

15 A. I didn't even get a copy of it. Didn't even
16 get a copy of it. There was no other copies involved
17 here. She wanted me sign, I refused to sign it, and I
18 left it at the window and I proceeded to focus on my DX
19 code that I knew I needed and I proceeded to go retrieve
20 it.

21 Q. At that point the conversation is kind of
22 getting a little agitated between the two of you?

23 A. Do you know Ms. Ford?

24 Q. I met her, but I can't speak to how she would

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1 be in this situation.

2 A. Then we will leave it there, then.

3 Q. Okay.

4 A. That was the end of the conversation.

5 Q. Are both of you getting frustrated at this
6 point?

7 A. I'm not frustrated because I didn't do anything
8 wrong. There was no need for me to get upset. I have
9 given you what I have. It matches everything that you
10 need. Sure, granted, I would have to say the DX code was
11 shy. If you look at both exhibits, one has a DX code on
12 it, 3905, and the other one doesn't. So as far as me
13 getting frustrated, there's no need to.

14 Q. Was she getting frustrated?

15 A. Yes. Yes.

16 Q. Do you know why?

17 A. I don't know why. I have no idea why.

18 Q. Basically it's fair to say that she offered
19 this to you, you refused to sign it, because we talked
20 about that before?

21 A. We could say that, yes.

22 Q. And then that's where you sort of left off, you
23 said, hey, I'll be back?

24 A. Yes.

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1 Q. Right?

2 A. Yes.

3 Q. In this whole situation, do you think that Dawn
4 was the discriminator? Because you're saying your
5 termination was discriminatory, right?

6 A. Yes.

7 Q. Were her actions the ones that you think are
8 discriminatory? Or tell me about how this altered form
9 and this process was discriminatory against you on the
10 basis of your disability.

11 A. Well, going to the theory, again, there was a
12 memo, which will be part of that packet that you will
13 receive, that she admits that I was not given 24 hours to
14 substantiate my information. It was a memo to
15 Mr. Dan Michaelenko. Like I said, she admits that I was
16 not given -- her words were I was not afforded 24 hours
17 because "I felt as though he was taken advantage of" --
18 basically taking advantage of the program. What do you
19 base that upon? What evidence can you produce that would
20 substantiate you even coming out of your mouth with
21 something like that? There's nothing.

22 Again, if you felt that strongly about it,
23 they could have called the doctor's office. His number
24 is in plain view here. I have no knowledge of any

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1 inquiries into my doctor's notes through my doctor, if
2 there was an investigation or not. It was basically --
3 from what I gleaned from the information that I have,
4 this was her call.

5 Q. She says you weren't given 24 hours to
6 substantiate, and, in fact, you weren't given 24 hours?

7 A. If I were given 24 hours, it would have been --
8 it happened on Friday, the 13th. That would have been
9 Monday, the 16th, would have been the correct date, which
10 is the date that, as I told you before, I called in. I
11 called Friday; didn't get anything. Wasn't really
12 expecting to really catch anyone in. Like I said, I had
13 to pick my daughter up.

14 Q. So you did call Friday?

15 A. Yes, I did call. I never got a response, never
16 got an answer, I didn't speak to anyone. I got the
17 usual -- not so much a busy signal. You go into the
18 loop, if you will. If the phone isn't answered, it will
19 just -- once you get in the loop, you're pretty much
20 there until someone decides -- inside the building
21 decides they want to pick up.

22 Q. Like a voice mail kind of machine?

23 A. You will get a voice mail. Again, needed to
24 speak to an individual and not a voice mail.

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1 Q. Did you have an opportunity to leave a message?

2 A. I never got a chance to speak with an
3 individual because we're dealing with this -- all right.
4 I don't know when they retrieve their messages. So it's
5 better if I speak to an individual, that way we both get
6 a response, an instance response. To leave a message, I
7 don't know when they would get it. Then it could also be
8 construed we never got it. This way, if I'm speaking
9 body to body, at least you know what I said, I know what
10 you said.

11 Q. You didn't leave a message because you wanted
12 to just verify by speaking to a person?

13 A. Yes. That my information was, in fact, there.
14 I knew Angela would give it to her. Angela, again, her
15 and I aren't friends either, but she works in the office
16 adjacent. They're in the same office. So I knew that it
17 was just a matter of here you go. For simplicity sake,
18 that's where we were with this thing.

19 Q. You called on Friday and got into sort of the
20 phone message loop system because no one was picking up?

21 A. Uh-huh. I got called Monday and that's when I
22 was informed, you need to contact your steward, you have
23 been terminated, yadda, yadda, so on and so forth. My
24 response to that was okay, because again, there's no need

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1 to jump up and down, holler and scream. What is it going
2 to prove? Again, I will handle it.

3 Q. We can talk about when you contacted your
4 steward and the grievance and that process. We will get
5 to that. That's something else we have on tap for this
6 morning.

7 A. Okay.

8 Q. The 24-hour requirement, you weren't given
9 24 hours. You were given a second opportunity to go back
10 to your doctor's office and get the proper paperwork,
11 right?

12 A. The DX code.

13 Q. Right. Dawn just didn't deny it outright and
14 terminate you on the spot. You did get a second chance
15 to go back and you told her you were going to go back to
16 your doctor?

17 A. To get the DX code, that is right.

18 Q. You said that Dawn at some point wrote a memo
19 that said that you were taking advantage of the program.

20 A. Yes. That was dated the 13th.

21 Q. Do you know why she would have said that?

22 A. No idea. No idea. To be honest with you, no
23 idea.

24 Q. To recap, because I just want to make sure I

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1 get all the evidence, because this is your chance to tell
2 me your evidence about discrimination on the basis of
3 your disability --

4 A. Yes.

5 Q. -- you're saying that the form was altered?

6 A. Yes.

7 Q. And that was discriminatory based on your
8 disability?

9 A. You're giving me -- yes, I would have to say
10 that, because that's what the purpose of that -- that's
11 why I was out, I was brought back -- not brought back,
12 but told to report because of my -- because of my
13 disability, the doctor's appointment. My notes would
14 substantiate my absence again because of my disability.
15 Yeah, that's pretty much it.

16 Q. When you were talking to Dawn that morning, did
17 you mention to her anything about your medical condition?

18 A. No. No. It's really not -- that's not her
19 call. What she needs to know is basically this is the
20 information that is requested, here you go. There's no
21 need to delve into your personal aspect of whatever your
22 case is. There's no need for that.

23 Q. You all didn't talk about your elbow or
24 anything about what your doctor was saying, none of the

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1 medical information?

2 A. No. I would not discuss that with her. Again,
3 she's not a physician, there's no need to do that.

4 Q. She's one of the administrators or the HR
5 person?

6 A. Yes. Okay.

7 Q. The altered form and then not being afforded
8 the 24 hours?

9 A. Yes. We didn't discuss that. That was
10 something that I had learned later through discovery that
11 a memo was written to Dan Michaelenko on the 13th which
12 addresses I guess her substantiation of my termination
13 and then like I said, some other things. But until I can
14 get an opportunity to speak with her or at least give her
15 some interrogatories between her and Mr. Michaelenko,
16 right now I can't really put too much into it because I
17 need to speak with these individuals, at least corner
18 them on events of that day.

19 Q. Again, you would say that Dawn was the
20 discriminatory actor when she didn't give you the
21 24 hours? You think she discriminated against you on the
22 basis of your disability by not doing that?

23 A. By not doing that when they could do that. You
24 didn't -- again, if there was any discrepancies, no

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1 investigation as to the whos, the whats, the whys of my
2 notes, no conversation that I know of, that I'm aware of
3 with my position, not being afforded the 24 hours, the
4 altered forms and stuff. Yes, that would be
5 discriminatory.

6 And again, short of knowing what her
7 true -- what her limitations of power are, like I said, I
8 wasn't being sarcastic when I was saying it before, if
9 you do not have the legal authority to change a form --
10 just things like that. That's why I say discriminatory.

11 Q. Any other reason why you think your termination
12 was discriminatory based on your disability or your
13 alleged disability?

14 A. No. It's a disability. It's no alleging. I
15 have documentation to prove that the condition does
16 exist.

17 Not right now.. Short of going truly into
18 the theory of it, no, this will be fine.

19 Q. So those two points are your basis for that
20 claim, right? Anything else you can give me? I want to
21 make sure --

22 A. When you say "those two points" --

23 Q. The altered form and not being afforded the
24 24 hours.

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1 A. That would be correct. Let's see what else.
2 Okay. Those are it for right now.

3 Q. Let's talk about what happened after your
4 termination. That was not the last communication that
5 you had with anybody at DaimlerChrysler, right?

6 A. No. I had spoken with John Mehalshick and we
7 were going to -- I asked him to put in a grievance. At
8 that point, short of what I found in discovery, I heard
9 nothing else until like a year later.

10 Do you want these back?

11 Q. No, that's okay. Hang on to them for a second
12 because we may have to go back to them.

13 Tell me about who John Mehalshick is.

14 A. John Mehalshick.

15 Q. Who is he?

16 A. He was the -- he was my shop steward when they
17 had moved me to second shift.

18 Q. Are there different shop stewards for each
19 shift?

20 A. Correct.

21 Q. Did you know John before you contacted him?

22 A. Yes.

23 Q. How well did you know him?

24 A. From the plant. I mean, he seemed like a nice

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1 guy. We have conversated, we get along fine, things like
2 that.

3 Q. Did you know him outside of work?

4 A. Prior to working at Chrysler, no.

5 Q. What about when you were working at Chrysler?

6 A. We seen each other. Like I said, we're
7 cordial, how you doing, so on and so forth. We're not
8 drinking buddies, if that's what you're asking.

9 Q. No. Just wanted to know what kind of
10 relationship you had. Was it more like a friend
11 relationship or was it more acquaintance?

12 A. I would go with acquaintance, coworkers, type
13 of thing like that, yes.

14 Q. Do you remember when you contacted John?

15 A. That would be the 16th.

16 Q. Did you call him?

17 A. Yes. I never stepped foot on Chrysler's
18 property from the date that I knew I was terminated. I
19 never went back to that plant.

20 Q. What did you talk about?

21 A. I was terminated.

22 Q. What was his response?

23 A. Basically, what happened. I told him what had
24 occurred, asked can I get a grievance put in, and that

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1 was pretty much the end of it.

2 Q. Is he the one that would be responsible for
3 filing the grievance?

4 A. Yes, it would be him.

5 Q. Did he do that?

6 A. From discovery I seen that, yes, he did.

7 Q. Did you know that he did it at the time?

8 A. He said he would do it. I had no reason to
9 believe that he would not.

10 Q. Tell me about the process for filing a
11 grievance.

12 A. I have never filed one. I filed one -- well, I
13 have had a shop steward file one before and, like I said,
14 that was back when I was in trim shop and the job was
15 overwork. We went through that and found out it was
16 overwork, but it stayed in my jacket. Sort of left a bad
17 taste because it's like how can you be wrong when you're
18 right? Your actions tell me I was right, but because of
19 the process -- we go past that.

20 So when I discussed a grievance with him, I
21 left it alone because, like I said, you can win a battle
22 and still lose the war with this thing.

23 Q. When you say you left it alone, what do you
24 mean by that?

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1 A. I requested a grievance be filed and that was
2 pretty much the end of it. He told me some other things,
3 but then that would fall under hearsay, but told me some
4 other things and stuff, general conversation. But that's
5 it. The process -- it sometimes can take a minute.

6 Q. By the way, it's okay to tell me hearsay. It
7 wouldn't be okay in court. You're right, though, you put
8 your finger on something very important, it would not be
9 okay in court.

10 A. That's when it was brought to my attention that
11 Dawn had said that I forged my signature.

12 Q. She said you forged your signature?

13 A. Not my signature, forged this document. Told
14 me I did that. Totally out of character. No basis
15 whatsoever. Plus, I'm a paralegal. Why would I do that?
16 That's the stupidest thing in the world. Why would you
17 do something like that that can instantly be traced back?
18 It's dumb. In fact, it's an insult. Let me stop.

19 Q. It was during that first phone conversation
20 with John -- I'm going to call him John M.

21 A. We're there.

22 Q. You called John and he told you that Dawn had
23 said you forged something?

24 A. The thing what got his attention, it was

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1 brought to Dan's attention that they thought that I had
2 forged it. Dan and I go back, we trained together. Dan
3 was also a facilitator, Mr. Dan Michaelenko. Dan knows I
4 wouldn't do anything like that. What I got back out of
5 it, even he said, that's totally not David, David
6 wouldn't do anything like that, which again, I wouldn't.
7 Just the stupidest thing in the world.

8 Q. John is telling you that Dawn said, hey, I
9 think he altered -- David altered the form.

10 A. Uh-huh.

11 Q. Do you know how John came to get that
12 information?

13 A. John would have to speak with Dan because Dan
14 is over Dawn. He may have spoken with Dawn. I'm sure he
15 did. But at the same time I know he spoke with Dan. He
16 had to.

17 Q. Did he speak to Dan before you even called him
18 to tell him you were terminated?

19 A. That chain of events I'm not sure of. I would
20 have to assume he did. Like I say, I hate to use the
21 word "assumption" but because it was the information was
22 brought to me.

23 Q. During that first phone call?

24 A. Yeah, through that, that wait a minute, what's

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1 going on here.

2 Q. So John contacted Dan?

3 A. Uh-huh.

4 Q. And Dan told John that Dawn thought that you
5 had altered the form?

6 A. Yes. Okay, going back to that, what we were
7 saying before, you were saying the two points of
8 contention with Dawn and discrimination, again, I would
9 have to also add to that you did not properly investigate
10 whatever claim was there. Again, like I said, I have no
11 knowledge that a call was made. My doctor never said
12 anything to me about it, so I have to say I don't know if
13 any investigation was, in fact, conducted.

14 Q. You're telling me that, if someone at Chrysler
15 thought that you altered the form, then they could have
16 conducted an investigation?

17 A. On their form themselves. Not this one, but
18 there's another reinstatement form that at the bottom
19 clearly states if they feel as though there was any --
20 that's the form we're looking for, right there. I think
21 you have it highlighted.

22 Q. This is Exhibit 11.

23 A. I believe you have it highlighted. They
24 reserve the right to investigate and so on and so forth.

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1 Does not -- "nor does it preclude management's right to
2 take disciplinary action where such statements may be
3 altered, falsified, or otherwise unsatisfactory
4 substantiation of the disability for the period in
5 question." Again, if no investigation is conducted and
6 you just go with that alone with no proof, yes, that is
7 discriminatory.

8 Q. You were just reading from Exhibit 11, right?

9 A. Yes.

10 Q. Continue what you were saying. Go on.

11 A. I'm saying if they did -- they do have the
12 right to investigate and verify the authenticity of a
13 statement. Had that been done, I would not be sitting
14 here now. Bottom paragraph, presentation of such a
15 statement.

16 Q. I see. That would have been the case if they
17 thought that you altered the form.

18 A. Correct.

19 Q. There's also a note on the letter that you
20 received to come in and substantiate your injury.
21 Remember you received that one on May 6?

22 A. Somewhere in there, yes. Obviously I came in.
23 I responded to it.

24 Q. The text of that letter indicated that, if you

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1 didn't substantiate your injury or your medical
2 condition, then your seniority would be terminated?

3 A. That's a possibility that that could occur;
4 however, here we go, I brought that in with me, the
5 doctor's notes.

6 Q. I want to go back to John and Dan, their
7 conversation that they had about this.

8 A. Okay.

9 Q. I know this is all coming secondhand, that you
10 heard it all from John.

11 A. Yes.

12 Q. John talked to Dan about this whole issue.

13 A. Yes.

14 Q. What did Dan say?

15 A. Basically, from what I remember, basically that
16 it's out of character, David wouldn't have done that.
17 They probably said some more, but I sort of was focused
18 on that because that's a serious allegation.

19 Q. Was Dan involved in the grievance process?

20 A. I'd have to say he initiated. Now, after that,
21 again, like I said, because I have been an alternate
22 steward, I have been an alternate committee man,
23 basically that aspect of the job I am not familiar with
24 what is the steps, what is the true procedure, what path

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1 it would take. That I cannot answer.

2 Q. From your understanding of this conversation,
3 sounds like Dan said, hey, that's out of character with
4 what David would do?

5 A. Yes.

6 Q. But your termination was still upheld?

7 A. Somewhere in there, yes.

8 Q. Is it possible that they could have looked at
9 the termination as an administrative termination?

10 A. That I cannot answer. I don't have enough
11 information to make that call.

12 Q. The grievance process, your understanding is
13 that you contact your shop steward if you're the employee
14 that's been harmed or suffered some kind of adverse
15 action. You contact your shop steward, they file your
16 grievance for you, and then you have to trust your shop
17 steward to see that grievance through?

18 A. That would be a correct assessment.

19 Q. So you're not really involved as the employee?

20 A. All I do is make the request. After then I'm
21 off over here somewhere.

22 Q. They're supposed to advocate on your behalf?

23 A. Supposedly.

24 Q. Let's take a look at your grievance form.

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1 Can I have this marked as Exhibit 16?

2 (Smiley Deposition Exhibit No. 16 was
3 marked for identification.)

4 BY MS. WASSON:

5 Q. Have you ever seen this document?

6 A. Just after what I received at -- received
7 through discovery.

8 Q. It looks like the grievant's name is
9 David Smiley or Smiley, comma D, right?

10 A. Yes.

11 Q. The department number would be yours, right?

12 A. 9110, yes.

13 Q. Whatever the clock number is?

14 A. 1681, my badge number.

15 Q. At the time you were working second shift
16 because the last position you held was the left fender
17 install?

18 A. Correct.

19 Q. The nature of the grievance says, "Unjust
20 Discharge," right?

21 A. Yes.

22 Q. It looks like it's signed down at the bottom.
23 Do you think this is John?

24 A. John Mehalshick, IV, yes.

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1 Q. Have you seen his signature before?

2 A. One other time. One other time. The IV is
3 what stands out.

4 Q. We feel pretty confident that this was his
5 signature at the bottom?

6 A. Yes.

7 Q. It looks like at the top, the first big box
8 here that starts out with "Plant," do you see that at the
9 top?

10 A. Okay.

11 Q. And then if you go down a couple lines, it
12 says, "Discussion 1, Date Held."

13 A. Yes, I see -- it looks like --

14 Q. To me it looks like "numerous." Then it looks
15 like the management rep was J. Asquith?

16 A. I don't know him. But then there's John, the
17 union rep man.

18 Q. The union rep was John.

19 A. Then we see discussion 2, again, "numerous,"
20 S. Heitzman. I'd have to say that's Steve Heitzman. I
21 have heard of him. I don't personally know him. And
22 again John Mehalshick.

23 Q. Do you know how the process is supposed to
24 work? Do they have a first discussion and second

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1 discussion? Can you tell me anything about that?

2 A. That I don't know. That I never had to deal
3 with. I have never -- that aspect I have never had to
4 deal with.

5 Q. It looks like the union writes down a statement
6 of what the grievance is?

7 A. Basically it was just unjustly discharged,
8 without going into any specifics.

9 Q. When you had that conversation with John or any
10 conversation with John during this grievance process, did
11 he ask you what you wanted as relief for your
12 termination? Did you talk about that?

13 A. No. Basically it was more or less -- because I
14 was still a little upset -- okay, that's when you got a
15 little anger out of me on that one. It was basically
16 needed the grievance filed. It was basically, in your
17 hands, do what you do.

18 Q. You didn't talk at that point about what kind
19 of relief you wanted or anything like that?

20 A. I'd have to assume -- I don't remember it, nor
21 do I remember it being, you know, offered to me as far as
22 what do I want. Look at this, "the union demand that
23 this violation stop immediately and bring employee
24 D. Smiley back with a clear record and full pay."

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1 Q. You just read from Exhibit 11, right?

2 A. Yes.

3 Q. You have never seen a copy of this grievance,
4 correct?

5 A. No.

6 Q. Then the management on this form has an
7 opportunity to give its answer?

8 A. Uh-huh. And they said that they found no
9 violation in this instance. "Employee Smiley reported to
10 plant personnel in response to a letter," so I did show,
11 from personnel to substantiate his absence. Employee
12 Smiley responded but did not follow the proper procedures
13 for substantiation," which I did. The only thing I
14 didn't have is a DX code, which I retrieved. "Employee
15 Smiley was issued a substantiation denial form," which I
16 was not. I was issued a reinstatement form. "And
17 awarded the opportunity to provide the necessary
18 documentation." There we go back to the DX. "Employee
19 Smiley failed to follow established procedures and was
20 therefore separated by employment." So I was fired by,
21 like you said, an administrative type of thing. "This
22 grievance and this demand are denied."

23 Q. Can you tell who signed on behalf of the
24 management down at the bottom?

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1 A. I have no idea whose signature that -- I don't
2 know what that is. I have a different signature. I
3 don't know who that is.

4 Q. It looks like this was May 20th, May 18th,
5 around that time period?

6 A. Yes. Both dates, yes.

7 Q. From what we can tell from this document, I
8 know you didn't see it contemporaneously, from what we
9 can tell from just looking at it, it looks like the union
10 brought your grievance and the management denied it, at
11 least at phase 1?

12 A. We can say that, yes. That would be a correct
13 assumption.

14 Q. What happened at this point? I mean,
15 management denies your grievance. Did you have a
16 conversation with your union rep at this point?

17 A. No. I can only assume that maybe they took it
18 to the next -- this is assuming. I wasn't there. We had
19 no conversations to this, but perhaps they pushed it
20 on -- I don't want to say reinstated. Sometimes when you
21 don't get the answer, there's a step 2 or I think it's
22 three steps. Again, that's not exactly my area of
23 expertise as far as the grievance procedure is. But I
24 believe there are other steps that can be taken.

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1 Q. Around May 20th when this initial denial was
2 made you were out of the loop?

3 A. Yes.

4 Q. When did you hear again from the union about
5 your grievance?

6 A. A letter that I received I think it was
7 April 16th of '06.

8 Q. Did you have communications with John or
9 anybody else on behalf of the union before that time, any
10 telephone calls, any other informal communications?

11 A. Left a message. We spoke. He said something
12 about that they were working on it.

13 Q. Did you call him?

14 A. Yeah, I had called him on that one. I can't
15 think of the exact day it was, but it was prior to
16 receiving that information.

17 Q. Do you think it was a couple months later? Do
18 you think it was a couple weeks?

19 A. That I received the letter from John?

20 Q. No, that you had --

21 A. That I spoke with John?

22 Q. Right.

23 A. I would say maybe a couple weeks before I had
24 received it.

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1 Q. Received the letter from the union?

2 A. Yes. Maybe a week or so.

3 Q. You called John?

4 A. Yes.

5 Q. What did you all talk about?

6 A. Basically where we're at with this thing, how
7 is it going. That was pretty much it. The full gist of
8 the conversation I don't remember, but basically touching
9 base.

10 Q. Did he give you any information about how the
11 grievance process was proceeding?

12 A. Well, basically he's like, we're working on it,
13 we might be able to get you back. But then that's a
14 generic answer and you're supposed to say something like
15 that.

16 Q. Did he say where the process was as far as the
17 different phases or procedures?

18 A. No, no recollection of that. No.

19 Q. Did you have any discussions with management
20 about your grievance?

21 A. No. No.

22 Q. You didn't call Dan or anybody at Chrysler?

23 A. No, I didn't call Dan. I didn't call anyone
24 there. Like I said, the day I was terminated or the day

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1 I discovered I was terminated, I have had no
2 conversations with anyone inside that facility, nor have
3 I stepped foot on their property.

4 Q. Any conversations with anybody else in the
5 union during this period where your grievance is sort of
6 in process?

7 A. No call-backs, no. I even tried to speak with
8 the union's president and no response there. I'm
9 basically just out there by yourself.

10 Q. You tried to call the president?

11 A. Yes. And that got me nowhere.

12 Q. Anybody else you tried to contact?

13 A. Oh, gosh. There's someone in Detroit. I
14 forget who it is in Detroit. But they're over the
15 unions. I tried to get with the international,
16 Don Cordell. Never received any response there. Like I
17 said, you're basically out there on your own.

18 Q. You called the president in Detroit from
19 international during the grievance process before this
20 letter from John?

21 A. Yes.

22 Q. No responses?

23 A. No.

24 Q. Anybody else at Chrysler that you could talk to

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1 besides the president and John or that you did talk to,
2 let me rephrase that?

3 A. No one else I did speak to outside of John
4 because it came from -- I'd have to say because it's
5 administrative, because Dawn fired me. Basically who in
6 there is there to speak to? They have the union side and
7 then they have the management side. I spoke with the
8 union side because I'm not a member of management. There
9 you go.

10 Q. So during this time period you make what, one
11 contact with John between the time your grievance is
12 filed and you received the letter from him?

13 A. There may have been others, but there was one
14 that we had a conversation on, because I mean, at the
15 same time John has -- how many people were there? He has
16 over 100 people that he has to look out for. So just
17 little old me and I'm no longer in there, I get to you
18 when I can. I'm not mad about that, I have no problem
19 with that, I know sort of what your job entails, I know
20 what you have to deal with, so I can't get upset about
21 that. All I know I did what I felt I had to do.

22 Q. The grievance process, if the union and the
23 management reach a decision, is that decision binding on
24 you?

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1 A. Don't know. Never been in that situation
2 before. I'd have to say the last time that a decision
3 was made on my behalf, it was somewhat binding, it's
4 still in my jacket.

5 Q. If the union and the management agree on a
6 resolution and let's say you don't agree with the
7 resolution that they came to, do you have any way of
8 changing that, or is it binding on you in that sense?

9 A. I guess it would have to be binding on me
10 perhaps -- I don't know. I don't know. I'm not really
11 sure. But I'd have to say maybe yes, maybe yes.

12 Q. Because is there any other avenue that you can
13 use to appeal that resolution?

14 A. I went to EEOC. That didn't work out. Again,
15 that's pretty much how I ended up here.

16 Q. The EEOC, let's not talk about them for a
17 second. We can get to them later. I'm talking about
18 within the union and Chrysler, within the sort of
19 disciplinary process. If you'd keep it within the
20 company and the union.

21 A. No one else that I can think of right offhand.

22 Q. There's not an appeal procedure if you don't
23 like the decision that the union and the management made
24 on your behalf? You can't take that anywhere?

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1 A. Not that I know of. If it were, you probably
2 still be out in the street anyway until they decided to
3 come to a resolution.

4 Q. Basically is the process at Chrysler and with
5 your union that the union represents you and the union is
6 supposed to advocate on your behalf and if they reach a
7 decision, it's supposed to be the decision for you?

8 A. In an ideal scenario, yes.

9 Q. Do you know if they reached a resolution of
10 your grievance?

11 A. The letter from the 6th stated a comparable
12 decision was made. Compromise to me is compromise.

13 Q. Let's take a look at that letter here.

14 Exhibit 17, please.

15 (Smiley Deposition Exhibit No. 17 was
16 marked for identification.)

17 MS. WASSON: Can we go off the record?

18 (Discussion off the record.)

19 BY MS. WASSON:

20 Q. We're looking at Exhibit 17, right?

21 A. Uh-huh.

22 Q. Is this the letter that you were referring to?

23 A. That would be correct.

24 Q. You did actually receive this letter sometime

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1 in April of '06?

2 A. That is correct. Okay, I said April 16th.
3 April 3rd. But 2006. I knew it was 2006.

4 Q. You were saying that this second paragraph
5 talks about reaching a comparable decision on your behalf
6 for your reinstatement?

7 A. Uh-huh.

8 Q. You got this letter and you saw that it said
9 that.

10 A. Uh-huh.

11 Q. What did you do at that point?

12 A. Tried to contact John. Didn't get in contact
13 with him because I wanted to find out what's a comparable
14 decision. Still to this day I do not know what a
15 comparable decision is.

16 Q. It says that you're supposed to contact them
17 within five days, right?

18 A. For your "continued employment." It's not
19 continued employment if you're terminated.

20 Q. Did you contact John within the five-day
21 period?

22 A. I never got through to him, but I did call,
23 yes.

24 Q. At any point after you got this letter, did you

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1 end up talking to him?

2 A. We did not -- we have not spoken actually since
3 then, since the last time when he told me he was still
4 working on it. It was shortly before this and he's like,
5 we're working on it. And that was the last conversation
6 that we really had had.

7 Q. You contacted him. Did you leave a message for
8 him?

9 A. Yes.

10 Q. After you got this letter?

11 A. Yes.

12 Q. He never called you back?

13 A. I didn't receive the call. So if he did, he
14 didn't leave a message that he had called, because at the
15 same time, I mean -- I'm trying to think of what I was
16 doing back then. To the best of my knowledge, we hadn't
17 had a discussion.

18 Q. From the time you received the letter to the
19 present day, you haven't talked to him about the contents
20 of this letter?

21 A. No.

22 Q. Did you talk to anybody at the union about it?

23 A. No, because after you're ignored so many times,
24 you just kind of I'll leave it alone and I pursued this

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1 another way.

2 Q. So this says that they have reached a
3 comparable decision on your behalf for your reinstatement
4 of employment. Did you want to come back and be
5 reinstated?

6 A. Well, I was still -- we had some issues that
7 needed to be cleared up. Again, it shouldn't have
8 happened in the first place. And then, like I said -- by
9 then I was speaking with the EEOC on this and that was
10 prior to my filing with the courts for why we're here
11 today.

12 Q. Right. You don't really know what the
13 comparable decision turned out to be, right?

14 A. Well, basically it did not say David Smiley,
15 you are reinstated. It says a compromise had been
16 reached. What compromise? There's nothing to compromise
17 if you have everything that you need.

18 Q. After you left the message for John within the
19 five-day period, did you keep trying?

20 A. No, because like I said, I have called before
21 and I never got any response. Like I said, every now and
22 then you can catch him, but other times you can't.

23 Q. But weren't you interested in hearing what the
24 decision would have been, because it does say "for your

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1 reinstatement"?

2 A. A comparable decision. It did not say I was
3 reinstated. It says a comparable -- "comparable decision
4 on your behalf for your reinstatement." So it didn't say
5 I was reinstated. Basically you're somehow -- somewhere
6 there was a compromise made and that's basically it. It
7 did not specify, you are reinstated. Like I said, you're
8 continued. Again, it doesn't say "reinstated."
9 "Continued." How can I continue if I have been
10 terminated?

11 Q. You weren't even curious about what the
12 decision was?

13 A. They had pretty much did what they were going
14 to do to me and whatever I say really wasn't going to
15 make a whole heck of a lot of difference.

16 Q. But you didn't know, though, what they were
17 going to do?

18 A. I do know that they didn't reinstate me.

19 Q. But could that have been because you never
20 called them back and got in touch with them? I'm trying
21 to understand.

22 A. No. Going by this letter, again, "continued
23 employment" versus "reinstatement," two different terms.
24 Compromise, what's the compromise? What did I do wrong?

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1 I did everything by the book how they asked me to do it.

2 Q. Are you basically telling me that you just
3 decided once you read this letter that it wasn't worth
4 pursuing?

5 A. I called. I didn't hear anything else. And
6 no, I did not pursue it. Once I called and I didn't
7 receive my response, I figured, hey, they're doing what
8 they want to do. Obviously it's not in my best interest.

9 Q. You knew it wasn't in your best interest how,
10 because there was some kind of a compromise made?

11 A. A compromise, continued. Like I say, looking
12 at the letter, it does not state, you are reinstated. It
13 does not say that on here. Had it said that, then we
14 probably would not be sitting here, but it did not say
15 that.

16 Q. The paragraph also says, "Per our conversation
17 dated Monday February 13, I had informed you that the
18 Union and Management had reached a comparable decision on
19 your behalf for your reinstatement of employment."

20 A. What they should have read is we're working on
21 it.

22 Q. On February 13th, 2006, do you think that was
23 the day that you had the call with John or can you
24 remember what he's talking about here when he says, "Per

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1 our conversation"?

2 A. Let's see. He did not tell me that I was
3 reinstated. That I can tell you. John did not tell me
4 that.

5 Q. Do you think that was the call that you
6 remember about how he said, oh, we're working on it?

7 A. I'd have to say that's the one that I can
8 remember speaking with him.

9 Q. So you don't have a specific recollection of a
10 conversation on February 13th, 2006, where he's talking
11 about a decision that had been reached?

12 A. No.

13 Q. Because this letter doesn't say particularly
14 that you had been reinstated. It said we "reached a
15 comparable decision on your behalf for your
16 reinstatement," but it didn't say you're going to be
17 reinstated and that's the reason why you decided not to
18 continue to follow up?

19 A. No, like I said, I called and didn't get a
20 response. Again, compromise, whichever way you want to
21 do it is not saying you are reinstated. You fired me
22 with no -- not saying you, but you fired me with no ifs,
23 ands, and buts and you're going to bring me back. What
24 are we talking about? What are we compromising?

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1 Q. Would you have agreed to be reinstated with
2 some kind of compromise attached to it? Like let's say
3 you did call, let's say you called and John said, hey,
4 they're going to reinstate you, but you're going to have
5 to stay on shift 2, or something like that, would that
6 have been something you would have agreed with?

7 A. Going with answering your hypothetical, if John
8 were to say, you're reinstated, the thing is you have to
9 stay on second shift, that's different. That's a whole
10 different scenario.

11 Q. At the end of the day you don't know what the
12 decision was, right?

13 A. I'd have to say --

14 Q. What the compromise was.

15 A. Again, because he did not exactly tell me what
16 it was or, like I said, again, compromise, what kind of
17 compromise? You put in a grievance, you're compromising.
18 If I remember, compromise, well, I give something, you
19 get something. We're kind of trying to meet in the
20 middle here wherein I did everything that I was supposed
21 to do. You received no new information from me, not to
22 my knowledge, I was not made a party to any
23 investigations that were held. So compromise what?
24 Again, a comparable decision, you did not specify that I

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1 was reinstated. Again, continued employment versus
2 termination, reinstatement versus continuing.

3 Q. To this day you don't know what the actual
4 decision was that they reached, the union and the
5 management?

6 A. I'd have to say no, I don't.

7 Q. Did you have any more conversations with
8 anybody affiliated with the union after you received this
9 letter?

10 A. No. I was pretty much in the middle of
11 pursuing of where we're at now. Like I said, I still had
12 to tie up ends with the EEOC and then there was an appeal
13 made to Philadelphia district. You have all this stuff.

14 Q. So at that point you just figured, I'm just
15 going to pursue this through the EEOC process?

16 A. Yes. Figured at least if anything I might get
17 at least a straight answer out of something, at least a
18 call back, which they didn't.

19 Q. We're wrapping up soon. We have a couple
20 housekeeping things to just take care of. I want to make
21 crystal clear, are there any other reasons that you think
22 that Chrysler discriminated against you based on your
23 disability?

24 A. At this moment, as I sit, there's nothing I can

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1 think of at this time. Granted, I'm digesting everything
2 that we're doing here. Give me a few minutes. If
3 something else comes to mind, I will gladly give you a
4 call.

5 Q. Because this is kind of your show.

6 A. I understand. My case-in-chief and all that
7 good stuff.

8 Q. It's a good opportunity for you to tell me
9 everything that you think is a part of your case.

10 A. I understand.

11 Q. Because both of us have to know what is at
12 issue here.

13 A. Right. I understand.

14 Q. We have run the gamut through all the facts?

15 A. Okay.

16 Q. Right?

17 A. Pretty much.

18 Q. Can you think of any other facts that are
19 important that you want to talk about?

20 A. Nothing that you brought up. We went over --
21 yeah, we're pretty much there.

22 Q. There's one more thing I think you produced to
23 us either through your complaint or something --

24 A. That was the note from my physician for the DX

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1 code that was written on 3/9 of '04, '05. And in regards
2 to that -- what I was telling you about it was brought to
3 my attention that it may have been forged, that was the
4 purpose of that, even though if you look at the date that
5 he wrote it, it wasn't that same day, but that's about
6 the same time that I gained knowledge that I could
7 contact him and he responded to it.

8 Q. Let's put it into the record because I want to
9 talk about it for just a second because I want to make
10 sure where he wrote it and that sort of thing.

11 Can we mark this as 18, please?

12 (Smiley Deposition Exhibit No. 18 was
13 marked for identification.)

14 BY MS. WASSON:

15 Q. This is a note from Dr. Bandera, correct?

16 A. Correct, yes.

17 Q. And he says that "The medical note of 3/9/05
18 written on a prescription pad was exclusively written and
19 authorized by me, inclusive of the added DX of 726.32."

20 A. Right.

21 Q. It's dated 11/10/05; is that right?

22 A. Uh-huh.

23 Q. I assume at some point that you came to him and
24 asked him to write this note for you?

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1 A. What had happened, like I said, because it had
2 come back to me that there was talk of forgery and such,
3 what he did, because if you look at this note here, you
4 look at this, the date on this note, that just happened
5 to be the position where she put the DX code.

6 Q. When you say "she," you mean the receptionist?

7 A. Receptionist. What he was doing is because
8 it's that note there and it's all of these because it
9 encompasses the whole thing, but because that's why he
10 initialed -- I mean, he put down 39 because the note
11 itself says 39, but we're addressing the DX that the
12 receptionist had put on mine -- we're just addressing
13 that.

14 Q. Dr. Bandera did this in November of '05?

15 A. Uh-huh.

16 Q. At that point was your termination in the
17 grievance process?

18 A. 11/10, I'd have to say it had probably if we're
19 looking at a letter from the union in '06. Yes, I'd have
20 to assume that it was still in that process.

21 Q. Who did you give this to?

22 A. EEOC.

23 Q. The EEOC, okay. Did you ever give it to
24 anybody at Chrysler?

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1 A. Never stepped foot on their property after the
2 13th.

3 Q. Never sent it to anybody at Chrysler?

4 A. No.

5 Q. This note would be news to them, right? They
6 don't have this in their possession?

7 A. Had they did an investigation, they would have.

8 Q. But given the facts as they are, no, right,
9 this is not something that you ever submitted?

10 A. To Chrysler? In my complaint I believe it's
11 part of my complaint, also. So yes, Chrysler does have
12 it.

13 Q. Chrysler has it through the complaint and maybe
14 the EEOC process, but not contemporaneously with your --

15 A. I did not physically hand-deliver it, no.

16 Q. Or send it or anything?

17 A. Or mail it, no, pony express.

18 Q. Did you give it to your shop steward or anybody
19 else at the union?

20 A. No.

21 Q. This note was not used to help your grievance
22 process or to substantiate your case with Chrysler. This
23 was used to help the EEOC adjudicate your case?

24 A. Yes. That would be a proper assessment.

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1 Q. Anything else that you can think of as far as
2 facts, one more time, just so we're clear? That's all
3 the exhibits I have?

4 A. That would be the same thing that I have.

5 MS. WASSON: Can I have this marked as
6 Exhibit 19, please?

7 (Smiley Deposition Exhibit No. 19 was
8 marked for identification.)

9 MS. WASSON: And also this one as
10 Exhibit 20.

11 (Smiley Deposition Exhibit No. 20 was
12 marked for identification.)

13 BY MS. WASSON:

14 Q. Mr. Smiley, what you have just been handed is
15 the request for admission that Chrysler sent to you and
16 then also your answers.

17 A. My answers. I did these interrogatories, sorry
18 about that, but yes.

19 Q. That's not a problem.

20 I want to quickly walk through these with
21 you because you did answer them and that's fine. But
22 usually what happens when you respond is that you give
23 the basis for the response that you give.

24 A. Correct.

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1 Q. You're a pro se litigant, so that's fine. I
2 think what I'd like to do is kind of go through each one
3 so that I understand when you say "admits in part" or
4 "denies in part," which parts we're talking about just so
5 it's clear.

6 A. No problem.

7 Q. No. 1 about working in the left fender install
8 job --

9 A. Admitted.

10 Q. No. 2 --

11 A. Shall we just go to the portions that they're
12 admitted in part, denied in part?

13 Q. Sure.

14 A. That would be No. 4.

15 Q. Right.

16 A. Could not perform the job associated with the
17 left fender install job, admits in part, denies in part.
18 Admits in part, I was taken off of that job by my
19 physician. Denies in part, I did perform the job for a
20 year, but yes, in answer to that, in answer to that, like
21 I said, the denying part would be that I did perform the
22 job.

23 Q. Correct me if I'm wrong. Did you say, I
24 performed it for a year? You didn't mean a year?

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1 A. Did I say a year? I said a week, I believe. I
2 said a year? I did perform it for a week.

3 Q. We want a week, right?

4 A. Yes.

5 Q. Admits because you were taken off the job. In
6 that respect you could not perform the duties because
7 your doctor said no?

8 A. Yes.

9 Q. You deny in part because you did perform them
10 for a week's worth of time?

11 A. Correct.

12 Q. How about No. 5?

13 A. "Admit that you did not request an
14 accommodation after you were unable to perform the left
15 fender install job"... I have to deny that because I was
16 no longer there.

17 Q. You're telling me that you denied it because
18 your doctor took you out and you were on leave at that
19 time?

20 A. Yes.

21 Q. And because you were on leave, you weren't
22 going to try to request a different job because he took
23 you out of work?

24 A. Well, okay, you could say that, but -- I'd have

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1 to say it was -- in answer to your question as you have
2 it posed in front of me, the fact of the matter is my
3 physician had taken me out, so therefore, I was unable to
4 actually --

5 Q. So on with the rest of it, you're unable to
6 request an accommodation because --

7 A. Because I was no longer there.

8 Q. How about No. 6?

9 A. Denies in part, admits in part. No. 6. "Admit
10 that you were placed on medical leave February 18." I'm
11 not exactly sure when in February, so I guess I should
12 say insufficient information to adequately answer that
13 question. I do know that year, yes, that month, yes.
14 Somewhere in there. I don't know the specific date.

15 Q. What about No. 7, "Admit that you received
16 Sickness and Accident benefits while on medical leave
17 from February 2005 to your termination."

18 A. Okay. Well, I could not -- I have to deny that
19 because in order to have S & A, you can't be working, and
20 if I was terminated on the 13th of May, I could not have
21 received S & A.

22 Q. You were receiving workers' comp. benefits
23 during that medical leave, right?

24 A. I believe it was workmen's comp.

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1 Q. 8 looks like it's okay, right?

2 A. Uh-huh.

3 Q. 9, how about 9?

4 A. Okay. Denied because they were photocopies of
5 the originals.

6 Q. But do you admit that they were, in fact,
7 photocopies?

8 A. Of the originals.

9 Q. Yes. Photocopies of the originals?

10 A. Yes.

11 Q. Photostatic copies?

12 A. Yes. But you did not -- you didn't pose the
13 question that way, so I had to answer it that way.

14 Q. How about 10?

15 A. Denies in part. "Admit on May 13 an employee
16 in the personnel office informed you of the
17 substantiation requirements for your medical condition."
18 Let's see. No. 10. Okay. Where is this thing? This
19 thing here.

20 Q. Exhibit, which one is that, 13 maybe, the
21 substantiation denial?

22 A. The substantiation, yes. That was No. 10,
23 correct?

24 Q. Yes.

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1 A. Denied in part. Again, I did not sign again
2 because of this. So this, I did not physically receive
3 it. I was informed that I did need a DX code. Denied in
4 part. I didn't know I needed the DX code which is what I
5 went to retrieve.

6 Q. Are you denying in part because you didn't know
7 of the other requirements that you needed, you only knew
8 of the DX code?

9 A. I knew I needed the DX code. Like I said, this
10 had been like one of the last things we talked about
11 before I went out of there. Like I said, I pretty much
12 by here I was done. I have no idea when she put that in
13 here. I know she did looking at it. That's her
14 handwriting. That's why I'd have to say I knew I needed
15 a DX code which is what I focused on which is what I went
16 to retrieve.

17 Q. I just want to make sure I'm clear.

18 A. No problem.

19 Q. You're denying it in part because you would
20 admit that you knew you needed the DX code, correct?

21 A. Yes.

22 Q. You're denying in part because you didn't know
23 that you needed that information on Exhibit 13?

24 A. All this information is already on the notes.

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1 This is kind of I hate to use the word moot, but that's
2 moot. I already had all that.

3 Q. The reason why you think you fulfilled the
4 original note's requirement is because you submitted
5 photocopies of the original notes?

6 A. They are not facsimiles, they are not
7 rubber-stamped copies. So yes.

8 Q. That's why you figured you fulfilled this
9 requirement here where it says "original notes"?

10 A. That right there, like I said, that I'm not
11 really sure when she put it there and, like I said, it
12 really doesn't matter because I was stuck right up here.
13 You're giving me a form to say one thing, but it says
14 something else. If you didn't do what is supposed to be
15 done whenever you strike a paragraph. I mean, I'm not
16 saying that I know her job better than her. I don't.
17 However, at the same time, that's why I made an analogy
18 why don't you give me a blank sheet of paper and I'll put
19 my name to it.

20 Q. I understand that you did not want to accept
21 this because it had some strike-outs and handwritten
22 insertions?

23 A. That's why we have to say in part because I
24 knew I needed the DX. I went to his office to get said

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1 DX. That's why I have to answer it that way.

2 Q. How about No. 11?

3 A. I deny that, because they did not give me a
4 second opportunity. The second opportunity in my mind
5 would have been the 16th, the date of the 16th, the
6 24 hours. What transpired on the 13th is not a second
7 opportunity. Again, she wanted the DX. I brought back
8 DX.

9 Q. So she did give you a second chance to get the
10 DX?

11 A. I brought DX. I brought it back. I did bring
12 it back. Obviously I brought it back.

13 Q. You knew that at the point you came to see
14 Dawn, that there was at least one problem with your
15 substantiation requirements; you didn't have the DX?

16 A. She brought that to my attention. I will
17 admit, she brought that to my attention. I retrieved DX.

18 Q. Right. So at that point weren't you given a
19 second opportunity to go back and get the things that you
20 thought you needed?

21 A. I'd have to say no, considering that I was
22 terminated that same day. If there was an issue, there
23 are 24 hours that I would have -- I was supposed to have
24 to take care of that. I was not afforded those 24 hours.

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1 It goes right back to that. So for me to say I had a
2 second chance on the 13th when I came in in response to a
3 letter, I submitted what I had, that's not really the
4 first chance. I gave you what you wanted, now you asked
5 me for a DX code. I go back. So that would be a chance
6 there. Second chance, if there was any type of
7 discrepancy with what I had given you, you would not have
8 done it that same day.

9 Q. Would not have done what?

10 A. Terminated me on the same day, on the 13th. I
11 was terminated on the 13th, which, again, is why I
12 answered that in the fashion that I answered it.

13 Q. How about No. 12? The question is "Admit that
14 you returned to the Plant" -- I'm going to say it for the
15 record.

16 A. For photocopies of doctor's notes with DX code
17 written on them. One DX code and I did return that day
18 with the DX code.

19 Q. You denied in part because it was only one DX
20 code?

21 A. Yes.

22 Q. It really should have been DX instead of DCX;
23 is that correct?

24 A. DCX. DCX, I believe that's their ticker

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1 number. I believe that's the ticker number. But DX
2 would be the proper code for that again. That's why I
3 answered in the fashion that I answered because it was
4 one code.

5 Q. You admit that you came to the plant a second
6 time on May 13th, 2005? You admit that part, right?

7 A. Yes, I did, because that's when Angela is
8 involved at this point. That really is even more of a
9 sideshow. "Would you please do me a favor? I don't work
10 in that area anymore. I need you to make sure Dawn gets
11 this." Obviously she did it.

12 Q. You also admit that you returned with the
13 photocopies of the doctor's notes with the DX code, and
14 really, honestly, at that point it was a photocopy of a
15 photocopy, right, that you handed in? You didn't hand in
16 the original with the pen writing of the DX code on it?

17 A. No. I think it was a copy of a copy on that
18 one. Because I believe she made that --

19 Q. You admit that part of it?

20 A. Yes, I admit that part. That's why it was
21 answered in the fashion that it was answered.

22 Q. How about 13?

23 A. "Admit that a grievance was filed with regard
24 to your termination." At that time I know a request had

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1 been made. I did not know until after I received the
2 materials from discovery that it was made. So with the
3 information that I had available to me, I had to say no
4 at the time, to the best of my knowledge, because I did
5 not know.

6 Q. How about 14?

7 A. "Admit that Chrysler and the UAW Local 1183
8 reached a resolution of your grievance." On that one I
9 said I denied because basically I don't know what they
10 had done. I don't know.

11 Q. So that was another one that you just didn't
12 have any basis?

13 A. I didn't have the basis. I didn't know how far
14 or what exactly they had done at that moment.

15 Q. 15, not a problem, right?

16 A. No. 16, "Admit that the letter referenced in
17 Request No. 15 offered to reinstate your employment with
18 Chrysler." To that I did deny because, again, as we
19 discussed prior, it did not say, you are reinstated. It
20 addresses continued after termination, which would be a
21 reinstatement. The answer to the question has been
22 answered based on that information.

23 Q. When you just said continued, it addresses
24 continued versus termination --

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1 A. I was terminated, so continued means I never
2 went anywhere, I was terminated. In order to bring me
3 back, you have to reinstate me. It never said I was
4 reinstated.

5 Q. You have a problem with them saying "continued
6 employment." This letter is about your continued
7 employment at Chrysler?

8 A. Can't be continued if it's been severed. It
9 can be reinstated, it can be restarted, but continued
10 means there was no gap in it.

11 Q. The reason why you're taking issue with that is
12 just because it was a misstatement? Tell me why that's
13 bothering you so much that they said "continued
14 employment" instead of referencing your termination.

15 A. Okay. It does not adequately -- to me -- like
16 specifically of your question, you asked me a question,
17 I'll answer it. To anything else, this is basically --
18 it's not saying that I have a problem with your wording.
19 I'm stating that the wording does not properly reflect
20 the conditions that were prevalent at the time. Terms
21 such as "terminated," "continued," "reinstatement,"
22 they're all three different terms.

23 Q. But the reason why you have a problem with them
24 using "continued employment," is the reason you have a

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1 problem with that is just because that is a misstatement,
2 that it's not continued employment, this is really about
3 your termination and they got it wrong? I'm trying to
4 understand why that's a big deal.

5 A. If they got that much of a problem, how much
6 else did they get wrong? How can you adequately
7 represent me if you can't -- if what you're presenting to
8 me, a compromise, where there should be no compromise.
9 Continued, again, I was terminated. Let's address it for
10 what it is. Let's be more factual about it.

11 Q. Okay. I see where you're coming from now.
12 That makes sense.

13 A. Thank you. No. 17?

14 Q. Yes.

15 A. "Admit that you did not accept the offer of
16 reinstatement referenced in Request No. 15." I deny that
17 because it was not adequately posed. How did I not
18 accept because you didn't offer it? They did not offer
19 it. Nowhere in that letter does it state that I was
20 reinstated.

21 Q. It just says, "a comparable decision was
22 reached on your behalf with regard to reinstatement."

23 A. Right. It did not say, you are reinstated.
24 They told me I was terminated. Crystal clear, no

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1 ambiguity whatsoever.

2 Q. That's the end.

3 A. I'm not trying to give you a hard time.

4 Q. I know you're not. I want to make sure I
5 understand where you're coming from. I think I see what
6 you have to say.

7 A. Okay. Like I said, not trying to be difficult.

8 Q. No, no. I know that.

9 Anything else with regard to these
10 responses that you have to say or that you want to
11 clarify in any way?

12 A. No, ma'am. We pretty much covered it.

13 Q. We are in the homestretch here.

14 Let's talk about why you've brought the
15 case and what you're seeking as a result of bringing this
16 litigation. Not talking about the grievance anymore.
17 We're not talking about the EEOC.

18 A. What do I want for resolution?

19 Q. Here and now. What you're seeking in this
20 case, what you want to get out of filing this case.

21 A. Finally got something that you got me on.
22 Again, my name. If I'm going to be accused -- I have had
23 a position in Chrysler wherein which every position I
24 have had in Chrysler has been an appointment. That's a

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1 reflection of the way that I do what I do. I'm good at
2 what I do. I'm not bragging to you. I'm good at what I
3 do. I take what I do seriously. I wouldn't have been
4 chosen if they didn't think I was capable of performing.

5 I have received numerous awards. The vice
6 president's award. Well, that and 75 cents might get you
7 a cup of coffee, but, nonetheless, I received it. Team
8 of the month on a couple of occasions. At one time I had
9 aspirations to law. But basically you caught me -- not
10 you. I have been called a liar, a cheat. My
11 intelligence has been played with. I didn't do anything
12 wrong here. And I'm going to fight -- if something is
13 done, you're supposed to stand up for yourself because
14 obviously no one else was going to do it for me. But I
15 say it to say what do I want? What would it take at this
16 point? I don't know, because we had spoken about the
17 line. The injury still exists on my arm.

18 Q. Can you say that one more time?

19 A. We had spoken last week about possible line,
20 doing something with the line, if I would ever go back to
21 the line. I'd have to say the line is what caused this.
22 That's what caused this problem. It depends on what
23 capacity. Even if I were to entertain that idea, what
24 capacity, a line worker, a tech 2? For what? Because I

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1 got hurt doing your job? I still have to suffer the
2 indignities of being fired, losing my livelihood, about
3 to lose my family, my wife is ready to leave me. Now the
4 emotions are starting to come out. I have been through a
5 lot, my family has been through a lot. So to just say,
6 oh, well, I'll take a line job, it doesn't quite work
7 that way.

8 The only thing in their favor is I got
9 10 years to go until I retired if this were to resolve
10 and I go back and reinstate all my time and everything
11 else. I'd only have 10 years to go.

12 The other side is after working for Honda,
13 which I did not like, my family had to eat, after doing
14 things like that, where else really am I going to find a
15 livelihood that my family's accustomed to? So we have
16 that issue.

17 It's not as simple as what do I want. I
18 mean, okay, granted, it's greater than an apology. But
19 you know, and it's a shame, and I'm not trying to take
20 the easy way out. I focused more trying to get to where
21 we are right now than what I really want out of this.
22 Give me a minute on that and I can get back to you
23 adequately.

24 This is what has consumed me from the day

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1 this thing started. To just say, well, I want this,
2 this, this, and that and we can make this go away, I
3 can't give you that right now. Give me a second on that
4 and I can get back to you.

5 Q. I hate to do this to you because I know that
6 you want time to sort of think about these questions.

7 A. Top of my head, we will do it that way. I
8 understand you have your job to do that, and I understand
9 that. You're going to get to that.

10 What do I want? Quarter of a million
11 dollars, we will call it a day. No.

12 Q. I want to hear what you want, I do. That's
13 important.

14 A. What I want basically is my name, my good name.
15 Monetarily? I mean, they owe me already. I can't put a
16 dollar figure on it to do those type of calculations in
17 my head. I lost my benefits, all my benefits, medical.
18 Even if this had not occurred and I was out on
19 disability, I still would have received my vacation, I
20 still would have received my PAA time.

21 Q. What's PAA time?

22 A. Paid absence something or other. Basically
23 what it is, you have seven days that you're free to do
24 whatever you think you feel like doing and you can get

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1 paid for it.

2 Q. Like floating holidays?

3 A. Floating holidays, personal days, if you will.

4 If you have adequate time in -- and that's another thing.

5 I always make sure I have enough time that some days you

6 just don't feel like it. You keep those days. I have

7 lost that. Opportunities missed as far as even school.

8 Granted, I had considered going to law school. I'm still

9 going to go after my Master's. That I'm still going to

10 do. Maybe not law school. I'm still getting my Master's

11 because Bachelor's isn't enough to me. This is a

12 personal thing. That was taken away from me. We would

13 receive from -- each year through our contract you

14 receive I think it was \$4,500 a year to pursue whatever

15 educational endeavor you could come up with. I had that

16 taken away from me. I'm not getting any younger. I'm

17 46 years old. The opportunities are not going to be

18 there for a 46-year-old man as opposed to when I was that

19 20-some-odd-year-old kid when I walked in that building.

20 That's why, like I said, I'm not trying to

21 be difficult, but the question that you posed, it's no

22 real easy answer at this point. But we will try to get

23 through it.

24 Q. I know. I can appreciate that. I can.

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1 You can't even give me a ballpark about
2 dollar figure?

3 A. Okay.

4 Q. Lost wages, things like that?

5 A. Lost wages, let's see, if I were in there I
6 would think I was making -- I forget what I was making a
7 year. Let's say \$300,000.

8 Q. Can you tell me how you came up with that?

9 A. Per year, if I still work on the line, any
10 overtime that may have been involved and all the perks
11 that came with it, be that the education, be that the
12 PAA, be that if I was on the second-shift differential,
13 throw that in there, again, any opportunity if this
14 hadn't probably never happened, I'd have my Master's by
15 now. There were opportunities at Chrysler because I
16 remember one specific one, I had inquired about a
17 paralegal job. Granted, I would have had to move to
18 Detroit, but opportunities within the corporation. I
19 have never had any intention of working the line for
20 30 years. That has never been my intention. Any time I
21 do something, I'm going to try to do it to the best of my
22 ability. Whatever levels you have are the levels I'm
23 going to attain. I'm going to try and do that.
24 Opportunities intracorporation are no longer available

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1 because of this termination.

2 Q. So you would put maybe a \$300,000 figure for
3 the lost wages, your overtime, your benefits, medical,
4 vacation, PAA?

5 A. Uh-huh. We haven't even gotten to the pain in
6 the butt this has been to me and what it has cost me and
7 what it's about to cost me. My wife wants to separate
8 with me. Shall we go into loss of consortium as well?

9 Q. Well --

10 A. Yes. I'm about to be single. I hate to raise
11 my voice, but... Consortium.

12 Q. That's fine. I understand where you're going.
13 Pain and suffering, let's talk about your basis for that.

14 A. As far as the pain and suffering, mental
15 anguish would fall under pain and suffering. Like I
16 said, I have aged since this whole thing. I mean, you're
17 going to age every day, but I'm just saying the stress
18 that an individual has to go through and still try and
19 maintain -- I'm daddy, I have two little girls that
20 depend on me, and irregardless of what I'm going through
21 with this, I still have to be dad to them, and I'm going
22 to be dad to them. Daddy does what he has to do. There
23 are times that they don't quite understand it. They
24 don't understand the stress that this has taken my wife

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1 through. Trying to keep a face for them, it's...

2 The pain aspect, I can't even afford -- I
3 have to take over-the-counter Tylenol because I can't
4 afford the medications that I have. Again, no insurance.
5 That's why I say I guess I've never really quite delved
6 on it because it's deep. I had to put it deep to deal
7 with everything else. Sort of like we will get to that
8 in a minute, right now I have to deal with these issues.

9 Q. Have you ever consulted anybody, any kind of
10 medical provider, about your pain and suffering or
11 your -- any of those --

12 A. No, I haven't gone to that yet. It is
13 documented on a number of occasions that I do, in fact,
14 experience pain with my arm. But to have a dollar figure
15 computed for it, no, ma'am, I have not.

16 Q. Are you seeing anybody for the stress in your
17 life or anything like that?

18 A. I can't. Right now I don't have the luxury of
19 a breakdown. I just can't do that. I have too much
20 other stuff I have to do. When this is all over with, I
21 will probably bounce off of every wall you can think of,
22 but until then, I have to see this thing through.

23 Q. Can you give me a dollar figure for your pain
24 and suffering? And then tell me the basis for that.

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1 Tell me how you're going to come up with that number.

2 A. At this point I cannot. Excuse me, because I
3 kind of lost composure there for a second, but it's
4 just -- I've been under a lot here.

5 Q. Anything else that you're seeking in the case?

6 A. No, ma'am.

7 Q. Let's go to something a little more plain
8 vanilla here. We're going to mark this as Exhibit 21.

9 (Smiley Deposition Exhibit No. 21 was
10 marked for identification.)

11 BY MS. WASSON:

12 Q. Do you recognize this?

13 A. Uh-huh. This is the original complaint.

14 Q. The most important thing I want to talk about
15 is the attachments to your complaint because I see that
16 you have used the form complaint that you got in the
17 District Court. Is that right?

18 A. Yes.

19 Q. When you came to District Court and you wanted
20 to file your case against Chrysler, did the clerk of the
21 court give you this form?

22 A. Yes. I had applied pro se -- no, I'm sorry.
23 This form is public and this is the paperwork I had
24 received. There were some issues which is why there

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1 would be attempts later to amend because there were
2 certain things that were shy on this, that.

3 Q. Right. You came to the District Court and told
4 them that you wanted to file a civil rights complaint, or
5 tell me how you came about using this form.

6 A. Okay. Received a right to sue letter from the
7 EEOC from Delaware and then from the Eastern District of
8 Pennsylvania. Again, both were no-cause findings;
9 however, the right to sue letter was issued; therefore, I
10 pursued.

11 Q. You came into the District Court of Delaware.
12 Did you physically go there?

13 A. Physically.

14 Q. With the right to sue letter?

15 A. Yes.

16 Q. What happened then, did they give you this
17 form?

18 A. Basically I got this form and the rest of it is
19 pretty much history, yes.

20 Q. You just filled this form out.

21 A. Uh-huh.

22 Q. You attached a copy of your right to sue,
23 right?

24 A. Yes, ma'am.

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1 Q. Then you also attached some other documents
2 here?

3 A. Yes. This was the documents that were also
4 filed with the EEOC, and the purpose of that was to
5 encompass anything that I may have missed on one aspect.
6 And like I said, in this one case, particularly item 10,
7 attach notice of right to sue, so on and so forth. What
8 wasn't covered would be covered because I had just filed
9 the entire complaint, the EEOC complaint and in addition
10 to this. Like I said, it's not my best work. A little
11 too close to me.

12 Q. Well, this is a form and so you're pretty
13 limited in what you can do and what you can't do on this
14 form.

15 A. Yes.

16 Q. What I want to make sure of is this complaint,
17 the copy of this complaint that we're using as
18 Exhibit 21, I took from the docket in our case, but what
19 I want to make sure of is that all of these documents
20 that are attached are documents that you are fine with
21 the authenticity of, they're the ones that you did attach
22 to your complaint. I don't want any kind of weird
23 discrepancy coming up where if one of us wants to use one
24 of these documents later on in the case, that there's

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1 some issue about that this wasn't really attached or that
2 this isn't something you have seen.

3 A. No, there's no problem with that. Everything
4 that I have seen thus far -- let me look through it a
5 little more thoroughly.

6 Q. Take a minute if you would.

7 A. To the best of my knowledge, as I sit in front
8 of you, this is the complete complaint, the original
9 complaint that was filed with the District Court.

10 Okay.

11 Q. You feel pretty comfortable with the
12 attachments?

13 A. Yes, ma'am.

14 Q. One other thing about the complaint. The
15 complaint, because it's a form, you can look at page 3,
16 No. 11, it doesn't have a box for the ADA, for the
17 Americans With Disabilities Act.

18 A. That is correct.

19 Q. Is that why you didn't check any boxes here?

20 A. Yes. At the time we were looking at the
21 accommodation type of thing and ADA, and again, they were
22 dealing -- it deals with race, color, sex, religion,
23 national origin, things of that nature, which, like I
24 said, later on and through the amended complaint we

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1 covered. But at the same time it was enough to encompass
2 the ADA material as well.

3 Q. Right. Basically the claims in the case right
4 now, given what's happened before the procedure that's
5 happened before in the case, the claims in the case right
6 now against Chrysler are your two ADA claims, they're the
7 failure to accommodate and they're the wrongful term.

8 A. Yes.

9 Q. That's what this complaint is getting at?

10 A. Yes.

11 Q. Even though we don't have those on the form,
12 because we have your right to sue and we have your
13 charge, that's how we know.

14 A. Also we would go into -- going back to the same
15 form like you say on No. 3 from 11, like I said --

16 Q. What page are you on?

17 A. That's okay. No. 3.

18 Q. Page 3?

19 A. Page 3, yes, ma'am. On 11, like I said, it
20 goes with the race, the color, the sex, and so on and so
21 forth. The amended complaint deals with my
22 discrimination based upon being an American of African
23 descent.

24 Q. Those claims are directed at the union?

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1 A. Actually both of them.

2 Q. Right. Your new amended complaint after the
3 judge made her ruling?

4 A. Yes. It would be their baby now.

5 Q. It's their baby now. For purposes of Chrysler,
6 we're dealing with the ADA?

7 A. Yes, ma'am.

8 Q. Then your charge of discrimination, did you
9 identify anybody as a witness to the DOL?

10 A. The Department of Labor.

11 Q. Yes, the Department of Labor.

12 A. The only individual as far as witnesses,
13 individuals that witnessed what had occurred that morning
14 at the window?

15 Q. Whatever. Anybody that you thought would be a
16 good witness to help your case.

17 A. I have no witnesses. Basically I was there by
18 myself. I couldn't produce any witnesses. I do know
19 that they had spoke to a John Rutherford, which would be
20 my former first-shift -- I'm getting tongue-tied. My
21 first -- about to say coordinator. I told you that was
22 going to happen. Give me a second here.

23 Q. Take your time.

24 A. My first shop steward from first shift, that

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1 would be John Rutherford, they did speak with him.
2 Again, through information that I had received, there is
3 a redact form that they redact their questions that they
4 asked him. I can pretty much ascertain what they asked
5 him based upon his responses. So I do know they spoke
6 with one individual and that's it.

7 Q. They spoke with John Rutherford, who was the
8 first-shift shop steward?

9 A. Yes.

10 Q. Do you know why they chose him?

11 A. I have no idea. I have no idea. Even in his
12 response, his written response, is basically he didn't
13 know what was going on.

14 Q. He probably didn't, right?

15 A. That's a safe assumption. He probably doesn't
16 because I did not discuss it with him.

17 Q. You went to the other John, the second shift --

18 A. Because I was put on second shift, I have to
19 speak with the second shift -- the shop steward.

20 Q. Anybody else that has knowledge of your
21 discrimination claims?

22 A. No one that I had planned on thus far bringing
23 forward, no. I mean, of course my wife, other
24 individuals that worked there that are going through

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1 their own little battle and stuff like that, but no.

2 Q. Anybody that you think would be a comparator
3 that was treated better than you were in the same sort of
4 circumstances?

5 A. It's a case-by-case. You can't quite say.
6 There are times that I have seen it. I can't quote all
7 the particulars to you, but they do what they do. It's
8 not the best answer I can give you, but you know what I'm
9 saying, they do what they do.

10 Q. You can't tell me the name of somebody that you
11 think was in your situation and was treated better?

12 A. Well, in my situation I can't say that --
13 because then to say that would encompass did they have
14 the same injury. If you don't have the same injury,
15 there's going to be certain -- you can't get the same --
16 to adequately answer your question, it would have to be
17 someone that has the same condition as I. I mean, I know
18 of incidents that there were first-shift individuals with
19 far less time than me that have remained on the first
20 shift. I don't know the extent of their injury or even
21 the cause of their injury. So for me to sit here and say
22 that, well, they did such and such like that, without
23 having all the information in front of me, it's almost
24 baseless, it's almost baseless, because where is the

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1 benchmark? What do we have to compare it to? I know it
2 goes on, they know it goes on, it goes on, but to be able
3 to put a finger on it, that is a whole different matter.

4 Q. You can't do that at this point?

5 A. At this point, no, I can't.

6 Q. Do you intend to call any expert witnesses? I
7 have to ask you.

8 A. No.

9 Q. You told me that you will be giving me the
10 documents that you have that support your claims or that
11 you have collected?

12 A. Yes.

13 Q. The original documents, that sort of thing.
14 You have the subpoena, right?

15 A. I have the subpoena, yes.

16 Q. Do you have any documents that are going to be
17 sort of news to me that I haven't seen before?

18 A. No. Everything is pretty much out there.
19 Everything is pretty much out there. It's been going on
20 long enough. Everything is out there.

21 Q. Besides the originals of these types of
22 documents, and I say "these," I'm looking at exhibit --

23 A. I know what you're talking about.

24 Q. -- the exhibit that contains the medical notes.

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1 A. Yes.

2 Q. There's nothing else that is sort of new to the
3 case?

4 A. No surprises.

5 Q. No surprises, okay.

6 Have you ever filed another lawsuit before?

7 A. No, ma'am.

8 Q. Even a car wreck or anything like that?

9 A. No. Safe driver.

10 Q. Ever file another charge of discrimination?

11 A. No, ma'am.

12 Q. Any activity in another case where you served
13 as a witness?

14 A. No, ma'am.

15 Q. Ever think you were the victim of
16 discrimination at another employer?

17 A. All my life, but again didn't pursue it.

18 Q. Even if you thought you had been discriminated
19 against somewhere else other than Chrysler, you never
20 went far enough to take affirmative action as far as
21 filing a charge or making complaints?

22 A. I went elsewhere, I gained other employment.
23 It's a part of life. You accept it. I'm 40 some odd
24 years old. If it's a situation that you can change and

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1 better, make your situation better, you leave. Why put
2 up with it? Why put up with it?

3 Q. Do you remember what kind of discrimination you
4 were feeling at that point?

5 A. Outside of being the only black man in the
6 room, I mean, if you got to go that way, there's always
7 that. And you have individuals -- the worst type are the
8 ones that make their little jokes because we're friends
9 and you have no idea nor clue nor concept of what you're
10 really saying. You're telling me things without opening
11 your mouth.

12 Q. Like an ignorance type of thing?

13 A. There you go, an ignorance. An ignorance can
14 be veiled as it be intentional or just you didn't mean
15 it, but if it were turned around, you would understand
16 exactly what I'm saying to you.

17 Q. Like the implications of what was said?

18 A. Yes.

19 Q. The unsaid implications?

20 A. There you go. It's not so much what a person
21 says, it's what they don't say.

22 Q. You experienced that kind of discrimination at
23 another place of employment?

24 A. Other places. I mean, just life, period. It

Smiley v. DaimlerChrysler
David A. Smiley

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1 doesn't -- just because you go on a job for eight or nine
2 hours a day, it doesn't turn off, it's there, it follows
3 you. Every day I wake up I am reminded outside of my own
4 reflection, I am a black man. That's why I answered it
5 earlier, all my life.

6 Q. What about disability discrimination?

7 A. Well, the thing about disability discrimination
8 is I'd have to say my opportunities again considering my
9 manual dexterity is one of my strongest points is no
10 longer available to me. That has been taken away from
11 me.

12 Q. Right, but I'm not talking about that part of
13 it. I'm talking about feeling like the victim of
14 disability discrimination at another employment.

15 A. No, I have never been hurt at another
16 employer's before. Nothing like this, no.

17 Q. What about after your employment with Chrysler,
18 have you felt like the victim of disability
19 discrimination?

20 A. No, because the other jobs I have had did not
21 encompass doing what I did at Chrysler, the same
22 utilization of my arm that I did at Chrysler. So we're
23 talking apples and oranges with anything after I left
24 Chrysler.

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1 Q. These other places of employment, it wasn't an
2 issue because you could work without having that come up?

3 A. Yes.

4 MS. WASSON: Well, I think that that's all
5 the questions that I have for you. Thank you for being
6 willing to come in today and work with me on the
7 scheduling. I appreciate that.

8 THE WITNESS: I want to get to the bottom
9 of this just as much as you do.

10 MS. WASSON: Let's go off the record.

11 (Deposition concluded at 11:35 a.m.)

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T E S T I M O N Y

DEPONENT: DAVID A. SMILEY

PAGE

BY MS. WASSON..... 137

E X H I B I T S

SMILEY DEPOSITION EXHIBIT NO.

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Form..... 181

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20 - Interrogatory Answers..... 204

21 - Complaint..... 225

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REPLACE THIS PAGE

WITH THE ERRATA SHEET

AFTER IT HAS BEEN

COMPLETED AND SIGNED

BY THE DEPONENT

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CERTIFICATE OF REPORTER

STATE OF DELAWARE)

)

NEW CASTLE COUNTY)

I, Kimberly A. Hurley, Registered Professional Reporter and Notary Public, do hereby certify that there came before me on the 15th day of April, 2008, the deponent herein, DAVID A. SMILEY, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed by use of computer-aided transcription and computer printer under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

Kimberly A. Hurley

Certification No. 126-RPR
(Expires January 31, 2011)

DATED: April 27, 2008

A242

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID A. SMILEY,)	
)	
Plaintiff,)	
)	C.A. No. 1:07-005-SLR
v.)	
)	
DAIMLER CHRYSLER,)	
)	
Defendant.)	
)	

AFFIDAVIT OF DAWN FORD

STATE OF DELAWARE)
) ss.
COUNTY OF NEW CASTLE)

I, Dawn Ford, being duly sworn this ^{7th} 3 day of May, 2008, do depose and say:

1. My name is Dawn Ford. I am employed by Chrysler LLC ("Chrysler") as a Human Resources Generalist in the Newark Assembly Plant. I have been employed with Chrysler for 14 years and have worked as a Human Resources professional since 2002. I have a bachelor's degree in general studies, with a minor in Human Resources. I am currently working on a dual master's degree in Health Care Administration and Human Resources Management. I have training in various human resources fields, including employee interviewing, safety, discrimination and harassment.

2. As a Human Resources Generalist, I am responsible for handling, among other things, employee inquiries at the front desk, telephone inquiries to the Personnel Department, pay adjustments, employee orientation, and certain disciplinary processes. I also

am responsible for administering various Chrysler policies, including the reinstatement and medical substantiation policies.

3. Under Chrysler's absence policy, individuals on medical leave are required to report to the Plant Medical Department for periodic examinations with the plant physician. These examinations are designed to provide Chrysler with updated information on the individual's medical restrictions and a current assessment of the individual's condition. When an employee reports to the Plant Medical Department, he or she receives a copy of a Medical Pass listing, among other things, the date of his or her next exam.

4. Employees who skip or miss their appointments with the Plant Medical Department are sent a letter instructing them to report to the Personnel Department to substantiate their absences with documentation from their physicians. The letter consists of a standard form which contains the hours that an employee may report and includes a warning that failure to submit proper substantiation will result in termination of seniority. As a matter of course, we enclose a copy of Chrysler's substantiation policy with these letters so that the employees know what is required.

5. I am familiar with the requirements of the substantiation policy, and it is my job to administer the policy when employees report to the Personnel Department. The policy applies to any employee who is out of work for five days or more from a temporary separation, illness, or injury. These employees must provide documentation meeting certain criteria, including: the date of treatment; a proposed return to work date; a confirmation that the employee was unable to work during his or her absence; the diagnosis code (or "DX code") corresponding to the injury, and the physician's address and phone number. The doctor must sign the statement, and it must be on his or her office letterhead.

6. Chrysler also requires that employees' documentation be original. We do not accept photocopied or faxed documents as evidence of medical status. The reason Chrysler does not permit photocopies or faxes is because employees could easily commit fraud and/or alter their doctor's notes by adding or whiting out information from an original note and submitting a copy of the modified note in its place. To avoid that prospect, we require that employees submit original documentation. In fact, we do not even permit physician's offices to "rubberstamp" a doctor's signature – we want to see an original signature on original letterhead so that we can verify that the information submitted by the employees is true and accurate.

7. David A. Smiley, the plaintiff in this case, missed an appointment with the Plant Medical Department that was scheduled for May 4, 2005. This appointment was documented on Mr. Smiley's February 14, 2005 Medical Pass. On May 6, 2005, my colleague, Shannon West, sent a substantiation letter to Mr. Smiley. Pursuant to this letter, Mr. Smiley was given a deadline of May 13, 2005 to report to the Personnel Department with the proper documentation. We normally give employees five days to substantiate their absences, and Mr. Smiley's deadline was consistent with that timeframe. Ms. West sent Mr. Smiley this letter via overnight mail, so he would receive it the next day.

8. At this time, I did not know Mr. Smiley. I had never spoken to him, and I never worked in the same area of the plant as he did. I did not recognize him when he reported to the Personnel Department on the morning of May 13, 2005 to substantiate his absence.

9. Mr. Smiley brought documentation corresponding to each of the weeks he had been absent from work on medical leave. Upon reviewing each of the doctor's notes he submitted, I noticed that the documents were photocopies of the originals. I asked Mr. Smiley for his original documents, and he told me that they were at home. I told him that I needed to see

his original doctor's notes. In response, he told me that the photocopies were identical to the originals, but I could not accept them. He seemed somewhat agitated at my refusal. I also saw that his documents did not contain a DX code, and I told him that this was another requirement that the notes were missing.

10. To ensure that Mr. Smiley understood what he needed from his doctor, I wrote out a list of requirements for him. At that particular moment, when Mr. Smiley was standing at the front desk, the only forms within easy access were reinstatement denial forms. The reinstatement denial form is normally used when employees fail to submit proper documentation with regard to reinstatement. As such, this form was not applicable to Mr. Smiley, who was on a medical leave. Because I did not have any other forms handy, though, I wrote the requirements applicable to Mr. Smiley's substantiation on the reinstatement denial form and crossed out the reinstatement requirements that did not apply to him. I did so in Mr. Smiley's presence. I tried to give this form to Mr. Smiley and asked him to sign it to acknowledge our conversation. Mr. Smiley refused to sign the form and pushed it back across the counter at me.

11. Given that Mr. Smiley received his substantiation letter on May 7, he already had had ample time to visit his doctor and obtain medical notes that complied with Chrysler's requirements. However, consistent with the terms of his substantiation letter, I gave him until 3 pm that afternoon to return with proper documentation. Mr. Smiley never told me that he could not meet that deadline or that he would not have time to retrieve his original documents from home due to his schedule that day. Instead, he told me that he would be back that afternoon.

12. Later that morning, while I was away from the front desk, Mr. Smiley returned to the Personnel Department. He submitted documentation to one of the Personnel Administrators, Angenella Fleming, and left. When I reviewed Mr. Smiley's documentation later that day, I realized almost immediately that he had re-submitted photocopies of his doctor's notes, now bearing photocopied DX codes, despite the fact that I had asked for his originals. I did not understand why he would submit documents that he knew would be deficient based on our conversation that morning. I waited until 3 p.m. to see if Mr. Smiley would return to the Personnel Department with his original documentation, but he did not come in.

13. As a Human Resources Generalist, I am authorized to discharge employees who fail to properly substantiate their absences, and I do so routinely. Given the fact that Mr. Smiley already had been given two opportunities to comply with the substantiation policy and refused to do so without any explanation, I determined that he should be terminated from employment. That afternoon, I prepared a letter informing Mr. Smiley that he was being discharged for his failure to submit proper documentation substantiating his absences. I modified a form letter the Personnel Department uses for administrative terminations and filled in Mr. Smiley's name. I then sent this letter to Mr. Smiley via certified mail and wrote up a quick memo to the labor relations file documenting the reasons for Mr. Smiley's termination, in case he decided to file a grievance.

14. I was not involved in Mr. Smiley's grievance process.

15. Mr. Smiley is now claiming that I discriminated against him based on some kind of disability. This allegation is completely baseless. When I terminated Mr. Smiley's employment, I did not know what kind of injury or illness he had, or why he was absent from work on medical leave. I am not responsible for maintaining employee medical files, I do not

review such files, and I do not sit on the PQX Placement Committee or make any decisions concerning placements. Even to this day, I do not know what kind of disability Mr. Smiley is claiming to have.

16. I did not discriminate against Mr. Smiley in any way, including on the basis of a disability.

Dawn Ford
Dawn Ford, Human Resources Generalist

5/13/08
Date

SWORN TO AND SUBSCRIBED before me the day and year above written.

Carey M. Shea
Notary Public

CAREY M. SHEA
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires May 24, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID A. SMILEY,)	
)	
Plaintiff,)	
)	C.A. No. 1:07-005-SLR
v.)	
)	
DAIMLER CHRYSLER,)	
)	
Defendant.)	
)	

AFFIDAVIT OF STEVE HEITZMANN

STATE OF DELAWARE)
) ss.
COUNTY OF NEW CASTLE)

I, Steve Heitzmann, being duly sworn this 13th day of May, 2008, do depose and say:

1. My name is Steve Heitzmann. I am currently employed by Chrysler LLC ("Chrysler") as the Human Resources Manager for the Newark Assembly Plant. During the 2004-06 time period, I worked as the Labor Relations Supervisor. I have been employed with Chrysler for 22 years.

2. As the Labor Relations Supervisor, I was responsible for working with United Auto Workers Local 1183 ("union") officials in the development of joint policies, resolving employee grievances, administering the terms of the Collective Bargaining Agreement and other negotiated agreements, and handling various other issues with respect to union-management relations.

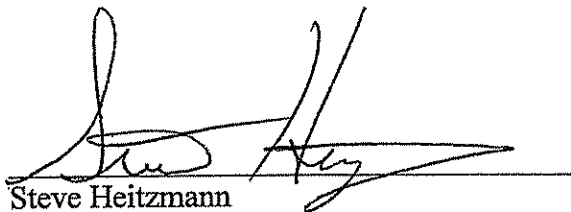
3. I have knowledge about the PQX placement process. "PQX" stands for "physically qualified with limitations," and PQXs are Chrysler's codes corresponding to various medical restrictions. The PQX Placement Committee is a joint team of union and management officials responsible for determining appropriate placements for individuals whose medical restrictions prevent them from performing their regular jobs. Through this process, Chrysler seeks to return physically qualified employees to work consistent with their seniority per the terms of the Collective Bargaining Agreement.

4. In considering an individual's ability to reinstate to work, the PQX Placement Committee analyzes whether any of the positions then available at the plant would be appropriate for the individual to perform given his or her seniority, department, and medical restrictions. The Committee recommends a work assignment, then a medical professional such as the plant physician or the OSHA nurse verifies that the proposed position would be compatible with the individual's medical restrictions. In 2005, Mr. Smiley was placed in an alternative position through the PQX Placement process. The documentation from the PQX Placement Committee regarding Mr. Smiley, which shows his seniority date, last day worked, restrictions, and alternative placement, was located in his personnel file.

5. After Mr. Smiley was terminated from employment, he filed a grievance. I was involved in the initial phases of Mr. Smiley's grievance, although I do not recall many specifics about it. The grievance documentation in Mr. Smiley's file makes clear, however, that Chrysler's management team decided to deny the grievance because Mr. Smiley clearly failed to follow the proper procedures for substantiating his absence, even after being given a second chance to do so. After discussions with Mr. Smiley's union representatives, the management team at Chrysler agreed to reinstate Mr. Smiley's employment. Mr. Smiley's union

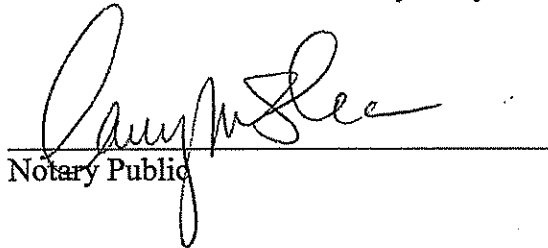
representative sent him a letter informing him of the joint decision and requesting that he contact the union within five days to discuss his reinstatement. This letter also was located in Mr. Smiley's file. Despite Chrysler's agreement to reinstate him, Mr. Smiley did not return to work at Chrysler.

6. On August 2, 2005, Mr. Smiley filed a Charge of Discrimination with the Delaware Department of Labor and has now filed this lawsuit, claiming that Chrysler discriminated against him based on a disability. These allegations are false. I do not believe Mr. Smiley was the victim of discrimination based on any alleged disability or any other protected characteristic.


Steve Heitzmann

5/13/08
Date

SWORN TO AND SUBSCRIBED before me the day and year above written.


Notary Public

CAREY M. SHEA
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires May 24, 2011

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REDACTED IN ITS ENTIRETY

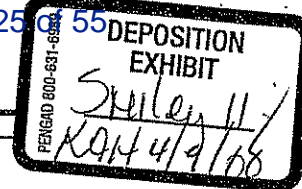
A255

REDACTED IN ITS ENTIRETY

A256

REDACTED IN ITS ENTIRETY

NEWARK ASSEMBLY PLANT INFORMATION NOTICE



RETURN TO WORK FROM CASUAL ABSENCE(S) (Less than five days):

For absences of less than five (5) days, a medical statement containing the above criteria, with the exception of the following provisions, must be submitted to your immediate supervisor the first day you return to work or the absence will be unexcused.

- An employee absent for medical reasons for (1) day is no longer required to submit a diagnosis on the doctor's letter substantiating the absence if treated by a physician.
- An employee absent for medical reasons for two (2) to four (4) days must treat no later than the second day of absence. If treated on the first day of absence, no diagnosis is required. If treated on the second day, the employee must provide a diagnosis, and the substantiation must cover the employee's first day of absence. All other information as noted in the Corporation's policy regarding medical substantiation remains required.

DOCUMENTATION REQUIREMENTS

All employees must have the following seven criteria when substantiating their absence(s) on doctor's letterhead:

1. The date the statement was written.
2. Date of treatment to include start and end dates of medical coverage (dates prior to initial treatment may be unexcused).
3. A return to work date.
4. Confirmation that the employee was totally disabled, totally incapacitated, or unable to work.
5. The diagnosis code for the absence.
6. The attending physician must sign the statement (NO RUBBER STAMPS)
7. The statement must contain the physician's address and phone number. (NO FAXES)

REINSTATEMENT/SUBSTANTIATION FROM TEMPORARY SEPARATION, ILLNESS OR INJURY (Five days or more):

Employees must treat no later than the third day absence. The plant policy remains that an employee released by his/her physician to return to work from sick leave or other temporary separation of five (5) days or more due to illness or injury must report to the Employment Office for reinstatement. Employees will not be permitted to enter the plant through Security for reinstatement purposes.

Employees must report to the Employment Office the day prior to reinstatement. All employees are required to report to the Employment Office and complete the reinstatement process prior to start of shift within the hours of operation:

DOCUMENTATION REQUIREMENTS

All employees must have the following seven criteria when substantiating their absence(s) on doctor's letterhead:

1. The date the statement was written.
2. Date of treatment to include start and end dates of medical coverage (dates prior to initial treatment may be unexcused).
3. A return to work date.
4. Confirmation that the employee was totally disabled, totally incapacitated, or unable to work.
5. The diagnosis code for the absence.
6. The attending physician must sign the statement (NO RUBBER STAMPS)
7. The statement must contain the physician's address and phone number. (NO FAXES)

Presentation of such a statement does not preclude Management's right to further investigate and verify the authenticity of the statement as presented by the employee. Nor does it preclude Management's right to take disciplinary action where such statements may be altered, falsified, or are otherwise unsatisfactory substantiation of the disability for the period in question.

When reporting to the Plant Personnel Office, enter the building through the outside door at the south end of the administration building. The hours for inactive employees are as follows:

Monday through Friday
9:00 a.m. – 11:30 a.m.
and
1:30 p.m. – 3:00 p.m.

CHRYSLER 103

A257

Paula Stout 3/1/05
V. Stout

Encounters For An Individual Employee

04/26/2006

Page: 1

Name SMILEY, DAVID A.
 EIN 241681
 Department B.I.W.
 Period 05/01/2003 to 03/15/2005

Date	Time	Type	Description	Examiner
05/02/2003	09:51a	NONOCC	Non-Occ Visit - Lt Wrist-ganglion Cyst	Noel, Evis
5/5/03. EE revisit for left wrist pain. States went to CCER this am and DX: Ganglionic cyst. States cyst was drained. States wrist is very painful. Has dc instructions from CCER and referral to see an Ortho specialist. Mod amt swelling noted left wrist. Band aid noted, sm punctured wound noted with removal of band aid. PQX B09 issued for BOS only. Evis Noel-Samuel, RN				
09/26/2003	10:20a	OCCINC	Occupational - R Elbow	Shrewsbury, Jennifer
Job: Door fitter x 3 years. C/O R elbow pain started about a month ago. Increased pain this past week. Since the new vehicle started he has had increased hammering and chiseling Also has to shut doors and pull on a metal hook to adjust the fender. Ice x 20 min. Tennis strap and IB given. RTO PRN. J Dubbs RN				
10/08/2003	08:45a	OCCINC	Occ-Revisit Right Elbow	Rennings, Heidi
10-08-03 EE reports with c/o continuing right lateral elbow pain. States feels pain with lateral movements and when extending and gripping (like when shaking someone's hand.) IB taken without help. Using Pronator strap, but not on correctly when presents to medical. Ice to arm. New pronator strap. Mediprofen given. Biofreeze to go. Advised on stretches for arm. Advised same at home. RTO next week if still painful. H Rennings RN				
10/23/2003	09:14a	OCCINC	Occ Visit- Pain Rt Elbow/contusion.	Noel, Evis
10/23/03. EE revisit for rt elbow pain. States pain continues since previous visits. Also states on 10/22/03 hit rt elbow on inside of the truck door while working on strikers. EE states applied ice at home and took pain meds on occasion, but pain continues. EE noted with elbow strap on rt elbow. Ice pack applied x 20 min, IB 2 tabs po given. Appt issued for 13:15 pm today for eval b y Dr Serra. Evis-Noel-Samuel,RN. 10/23/2003				
S: Hx as above. Door fitting has caused right elbow pain over last 6 weeks. Only temporary and partial relief with elbow strap and ASA.				
No significant PMH. Surgical history includes right toe reconstruction.				
No allergies.				
O: Pain with palpation over the right lateral epicondyle, which is exacerbated with resisted extension of the right wrist. There is no pain with palpation over the right olecranon bursa and no pain with palpation over the medial epicondyle.				
A: 1) Right lateral epicondylitis				
P: Discuss the risks and benefits of injection, iontophoresis, and po therapy. David would like to discuss it with his girlfriend first. RTC prn.				
Serra, MD, MPH				
12/15/2003	08:45a	OCCINC	*Occ Incident- Revisit Rt Elbow.	Noel, Evis
12/15/03. EE revisit for right elbow. States saw Sakalof ? in late October - early November and is treated with Bextra which is helping pain in elbow, but today rt elbow pain is increased. Request ice. Ice pack x 20 min applied. Evis Noel-Samuel,RN				
12/15/2003	08:45a	OCCINC	*Occ Incident- Contusion Left Wrist.	Noel, Evis
12/15/03. EE states job is door fitter x 3 years. Today approx: 8:15 - 8:30 am while fitting door, door sprung forward and came back and hit left wrist. States HX: Ganglion cyst left wrist. Cyst palpated radial aspect left wrist. Ice pack applied x 20 min, ES APAP 1000 mg po given, wrist support given. Instructed to rto prn. Evis Noel-Samuel,RN.				
12/22/2003	09:56a	OCCINC	*Occupational Incident Pain R Elbow	Rennings, Heidi
12-22-03 EE c/o Pain in Right Elbow. Wears support. Type one door fitter. Uses rachet to alppy door. Ice applied to right elbow. EE takes Benacor for pain 2 x a day. returned to work. D. Kondzielawa,RN/HRenningRN				
01/30/2004	11:43a	OCCINC	*Occupational Inc- R Elbow.	Shrewsbury, Jennifer
EE revisits for R elbow pain. States has been treating with Dr. Bandera. Rec'd a cortisone injection the week of 1/6/03-(not sure of date.) Ice x 15 min. Apap given. Has a t/u appt. with Dr. Bandera on 2/12/04. Advised to RTO PRN. J Dubbs RN				
01/30/2004	11:43a	OCCINC	*Occupational Inc- L Wrist	Shrewsbury, Jennifer
Revisit for Lump L wrist. States lump has not decreased any in size since last visit. Has intermittent pain. PMH of ganglion which was drained. Requests wrist support. Given. J Dubbs RN				
02/16/2004	08:40a	OCCINC	ERROR In Chart	Rennings, Heidi
02-16-04 EE reports with metal slag in arm. States on tightening exhaust muffler today at Col C-6, was tightening muffler and scraped right FA against metal, breaking off piece of slag which penetrated FA. Small area noted ulnar aspect of volar wrist. Explored with needle. Small piece of metal removed. Cleansed with NSS. Polysporin/DSD. RTO if Swelling/Redness/Drainage occurs. H Rennings RN				
PLEASE DISREGARD ABOVE ENTRY, WRONG EE. H RENNINGS RN				

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CHRYSLER 108

Encounters For An Individual Employee

04/26/2006

Page: 2

Name SMILEY, DAVID A.
 EIN 241681
 Department B.I.W.
 Period 05/01/2003 to 03/15/2005

Date	Time	Type	Description	Examiner
02/16/2004	08:50a	OCCINC	*Occu-Right Elbow	Rennings, Heidi

02-16-04 EE reports for right elbow pain. States saw Dr Bandera on Thursday, will start PT 2-3 times per week. Just wanted on record. Has not filed WC claim at this time. Referred to Disabilities Manager. H Rennings RN

02/17/2004	01:30p	OCCINC	*Occ Incident- Revisit Rt Elbow.	Noel, Evis
------------	--------	--------	----------------------------------	------------

2/17/03. EE revisit for rt elbow pain. States filed WC claim on 2/16/04 and has claim # for P.T., but cancelled P.T. on 2/16/04 due to misinformation received from numerous people related to WC process to be treated with P.T.
 Ice pack applied x 20 min and process explained to EE - WC is for bill payment and not necessarily to be paid until WC claim is approved, bills will be paid by BC/BS. EE understood instructions. States will call to reschedule P.T. Evis Noel-Samuel,RN

04/22/2004	01:20p	OCCINC	*Occupational Incident- R Elbow	Shrewsbury, Jennifer
------------	--------	--------	---------------------------------	----------------------

Job: Door fitter- R side. Supervisor- Sean Hutton. Revisit for R elbow. Was out for PT- came back on 4/5/04. Is doing good. Has some mild pain today in R elbow. Requests ice and IB. Ice x 20 min. IB given. J Fowler RN

04/29/2004	10:00a	OCCINC	*Occupational Incident- R Elbow	Shrewsbury, Jennifer
------------	--------	--------	---------------------------------	----------------------

Revisit for R elbow. Was seen by Dr. Bandera yesterday. Is going to continue PT. Taking own Tylenol. Is currently working. To discuss with Dr. Horowitz. J Fowler RN

4/29/04

S: EE presents for f/u of R elbow tendonitis/lateral epicondylitis. EE is followed by his PMD, Dr. Bandera, who has EE going to PT 2x/week. EE notes some improvement in sx. EE reports he can do his job without restrictions because he was able to "modify" his tools which takes stress off his elbow. EE reports steroid injections by Dr. Bandera without relief.

O: No distress. Pos tenderness over lateral epicondyle which is exacerbated with pronation/supination of arm

A: Lateral epicondylitis

P: Continue tx with Dr. Bandera and his PT. RTC prn.

Jack Horowitz, M.D.

06/24/2004	09:35a	OCCINC	*Occ Incident- Revisit Rt Elbow Pain.	Noel, Evis
------------	--------	--------	---------------------------------------	------------

6/24/04. EE revisit for rt elbow pain. Has f/u with Dr Bandera on 6/30/04. Attends P.T. 3 x/week.

Mod amt swelling noted. Ice pack applied x 20 min, IB 2 tabs po given, Tennis elbow strap, Biofreeze to go. Evis Noel-Samuel,RN

07/06/2004	11:40a	OCCINC	*Occ Incident- Revisit Rt Elbow/lt Wris	Noel, Evis
------------	--------	--------	---	------------

7/6/04. EE revisit for rt elbow and left wrist pain. States had a Cortisone injection in rt elbow on 6/30/04.

Sm amt swelling noted lateral aspect rt elbow.

Ice pack applied x 20 min, IB 2 tabs po, biofreeze to go. Evis Noel-Samuel,RN

11/03/2004	01:52p	OCCINC	Occ: R Elbow	Figueroa, Suzanne
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11/3/04 EE to medical per employment's request. Presents documentation on elbow. EE scheduled to be seen 11/10/04 @ 1:00PM. S. Figueroa RN

11/10/2004	01:08p	OCCINC	*Occupational Incident: RIGHT ELBOW	Sabo, Susan
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DR. SJ SABO

S-EE RTC FOR F/U FOR RIGHT ELBOW EPICONDYLITIS; HE HAS 16 YEARS OF SERVICE. HE LAST WORKED IN JULY OF 2004. HE HAS HAD TWO INJECTIONS INTO RIGHT ELBOW; LAST ONE WAS A FEW MONTHS AGO. HE HAS INTMT PARESTHESIAS IN FINGERS. HE HAD MRI OF RIGHT ELBOW ALSO; RESULTS ???

O-PE: SLIGHT FULLNESS AT RIGHT EXTENSOR SIDE OF ELBOW WITH FULL ROM IN ALL DIRECTIONS. THERE WAS NO MAGNIFIED PAIN BEHAVIOR. TINEL'S SIGN IS NEGATIVE AT ELBOW. THERE IS NO MUSCLE ATROPHY OR CLICKING. NO GROSS TENDERNESS WAS NOTED.

DME WAS DONE IN 9/04. RESULTS RECOMMENDED RTWR. EE HAS FULL USE OF BOTH EXTREMITIES ON OBSERVATION.

A-CHRONIC RIGHT LATERAL EPICONDYLITIS.

P-RTWR AS PER DME; I AGREE WITH IT. EE IS PLANNING ON ATTENDING LAW SCHOOL IN THE NEAR FUTURE. DR.

BANDERA DOES KEEP HIM TOTALLY DISABLED.

DR. SJ SABO

02/14/2005	10:16a	OCCINC	*Occupational Incident - R Lateral Epic	Tinklepaugh, Carole
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EE is seen for follow up of a right lateral epicondylitis and left wrist pain attributed to a ganglion cyst. He states that his physician, Dr. Bandera, has injected the right elbow three times, last time was in 11/04; and two or three times he has had the left wrist injected. Currently, he is taking Ibuprofen and a medicated patch on his right elbow.

PMH. Borderline blood pressure and cholesterol. He has, to date, been unable to get into law school. He was not accepted at either Widner or Temple. He is considering going back to school for a masters' degree - perhaps in IT.

O. NAD. Alert and oriented x 3. FROM right elbow. Some prominence of the lateral epicondyle. Non-tender. Left wrist. Nontender. No appreciable swelling. Strength UEs: 5/5. Reflexes UEs: 1+ and symmetric.

A. Right lateral Epicondylitis - advised to wear forearm splint.

P. May return to work with a 15 pound lifting restriction on the right. Carole N. Tinklepaugh, M.D.

CHRYSLER 109

A259

Encounters For An Individual Employee

04/26/2006

Page: 3

Name SMILEY, DAVID A.
EIN 241681
Department B.I.W.
Period 05/01/2003 to 03/15/2005

Date	Time	Type	Description	Examiner
02/15/2005	07:31p	OCCINC	*Occupational Incident- R ELBOW	Knight, Mary

2-15-05

S. EE TO MEDICAL REQUESTING ICE TO KNOWN INJURY OF RT. ELBOW. PAIN TODAY IS 5/10. TOOK IBUPROFEN EARLIER TODAY.

O NO SWELLING NOTED

A. PAIN RT. ELBOW

P ICE APPLIED X 20 MIN RTW WITH PQX MARY KNIGHT, RN

CHRYSLER 110

A260

Encounters For An Individual Employee

11/01/2007

Page: 1

Name SMILEY, DAVID A.
 EIN 241681
 Department B.I.W.
 Period to 11/01/2007

Date	Time	Type	Description	Examiner
03/29/1986	09:21a	PHYSEX	PHYSICAL EXAM	
03/23/1989	09:12a	PHYSEX	PHYSICAL EXAM	
10/29/1990	04:45p	PHYSEX	PHYSICAL EXAM	
05/31/1991	05:40p	PHYSEX	PHYSICAL EXAM	
10/23/1991	07:20p	PHYSEX	PHYSICAL EXAM	
02/18/1999	11:23a	OCCINJ	FIRST AID	
03/05/1999	05:30a	OCCINJ	FIRST AID	
03/05/1999	07:55a	OCCILL		
03/29/1999	10:05a	OCCILL		
04/01/1999	09:07a	OCCILL		
04/30/1999	12:50p	OCCILL		
06/12/1999	08:40a	NONOCC	NON OCCUPATIONAL INJURY	
08/25/1999	09:17a	OCCILL		
08/28/1999	06:05a	OCCILL		
10/06/1999	09:10a	NONOCC	NON OCCUPATIONAL INJURY	
10/08/1999	05:31a	OCCINJ	FIRST AID	
01/13/2000	05:33a	NONOCC	NON OCCUPATIONAL INJURY	
01/13/2000	12:15p	OCCINJ	FIRST AID	
01/19/2000	06:30a	NONOCC	NON OCCUPATIONAL INJURY	
02/11/2000	09:00a	OCCINJ	FIRST AID	
03/04/2000	09:05a	NONOCC	NON OCCUPATIONAL INJURY	
05/18/2000	10:47a	NONOCC	NON OCCUPATIONAL INJURY	
05/30/2000	12:10p	NONOCC	NON OCCUPATIONAL INJURY	
06/07/2000	08:45a	PHYSEX	PHYSICAL EXAM	
06/12/2000	10:17a	NONOCC	NON OCCUPATIONAL INJURY	
08/08/2000	06:08a	NONOCC	NON OCCUPATIONAL INJURY	
10/03/2000	12:37p	NONOCC	NON OCCUPATIONAL INJURY	
10/06/2000	09:28a	NONOCC	NON OCCUPATIONAL INJURY	
02/22/2001	10:00p	NONOCC	NON OCCUPATIONAL INJURY	
02/23/2001	03:17p	PHYSEX	PHYSICAL EXAM	
04/12/2001	06:18p	NONOCC	NON OCCUPATIONAL INJURY	
06/15/2001	03:25p	OCCINJ	Occ Inj - cont. l. elbow	Wallace, Annetta

S: i was writing track #'s down and co-worker closed hood door and hit my l. elbow. O: pain on palpation of elbow and r.o.m. exam. A: contusion of l. elbow. P: ice to area, apap x 3 doses. r.t.w.. a. wallace, r.n.

05/14/2002	11:40a	NONOCC	Non-Occ Visit -allergic reaction.	
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States ate Chinese food last night, and today noted eyes red and puffy and some rashes on face, states daughter had same reaction last night.

Lg amt redness noted bil eyes, sm amt swelling noted lower eye lids, raised rash on left side of face.

Benadryl 25 mg po, Hydrocortisone cream 1% applied to rash, eyes flushed with NSS. Evis Noel, RN.

04/28/2003	01:25p	NONOCC	Non-Occu-knot left wrist	Rennings, Heidi
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04-28-03 EE reports with c/o knot-like swelling on left wrist. States started just today. No recent job changes. No trauma to area. No c/o soreness or numbness. Knot noted volar wrist, radial aspect. 3" wristlet given. Advised IB if pain presents. Biofreeze to area. Advise f/u with FMD if necessary. H Rennings RN

04/30/2003	06:00a	NONOCC	Non-Occu-revisit Knot Left Wrist	Rennings, Heidi
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04-30-03 EE revisits for left wrist knot. States wore wristlet and took ASA without help. ES APAP given. Supprt given. Advised to F/U with FMD. H Rennings RN

05/02/2003	09:51a	NONOCC	Non-Occ Visit - Lt Wrist-ganglion Cyst	Noel, Evis
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5/5/03. EE revisit for left wrist pain. States went to CCER this am and DX: Ganglionic cyst. States cyst was drained. States wrist is very painful. Has dc instructions from CCER and referral to see an Ortho specialist.

Mod amt swelling noted left wrist. Band aid noted, sm punctured wound noted with removal of band aid. PQX B09 issued for BOS only.

Evis Noel-Samuel, RN

CHRYSLER 076

A261

Encounters For An Individual Employee

11/01/2007

Page: 2

Name SMILEY, DAVID A.
 EIN 241681
 Department B.I.W.
 Period to 11/01/2007

Date	Time	Type	Description	Examiner
09/26/2003	10:20a	OCCINC	Occupational - R Elbow	Shrewsbury, Jennifer

Job: Door fitter x 3 years. C/O R elbow pain started about a month ago. Increased pain this past week. Since the new vehicle started he has had increased hammering and chiseling Also has to shut doors and pull on a metal hook to adjust the fender. Ice x 20 min. Tennis strap and IB given. RTO PRN. J Dubbs RN

10/08/2003	08:45a	OCCINC	Occ-Revisit Right Elbow	Rennings, Heidi
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10-08-03 EE reports with c/o continuing right lateral elbow pain. States feels pain with lateral movements and when extending and gripping (like when shaking someone's hand.) IB taken without help. Using Pronator strap, but not on correctly when presents to medical. Ice to arm. New pronator strap. Mediproxen given. Biofreeze to go. Advised on stretches for arm. Advised same at home. RTO next week if still painful. H Rennings RN

10/23/2003	09:14a	OCCINC	Occ Visit- Pain Rt Elbow/contusion.	Noel, Evis
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10/23/03. EE revisit for rt elbow pain. States pain continues since previous visits. Also states on 10/22/03 hit rt elbow on inside of the truck door while working on strikers. EE states applied ice at home and took pain meds on occasion, but pain continues. EE noted with elbow strap on rt elbow.

Ice pack applied x 20 min, IB 2 tabs po given. Appt issued for 13:15 pm today for eval b y Dr Serra. Evis Noel-Samuel,RN.
 10/23/2003

S: Hx as above. Door fitting has caused right elbow pain over last 6 weeks. Only temporary and partial relief with elbow strap and ASA.

No significant PMH. Surgical history includes right toe reconstruction.

No allergies.

O: Pain with palpation over the right lateral epicondyle, which is eacerbated with resisted extension of the right wrist. There is no pain with palpation over the right olecranon bursa and no pain with palpation over the medial epocondle.

A: 1) Right lateral epicondylitis

P: Discuss the risks and benefits of injection, iontophoresis, and po therapy. David would like to discuss it with his girlfriend first. RTC pm.

Serra, MD, MPH

12/15/2003	08:45a	OCCINC	*Occ Incident- Revisit Rt Elbow.	Noel, Evis
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12/15/03. EE revisit for right elbow. States saw Sakalof ? in late October - early November and is treated with Bextra which is helping pain in elbow, but today rt elbow pain is increased. Request ice. Ice pack x 20 min applied. Evis Noel-Samuel,RN

12/15/2003	08:45a	OCCINC	*Occ Incident- Contusion Left Wrist.	Noel, Evis
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12/15/03. EE states job is door fitter x 3 years. Today approx: 8:15 - 8:30 am while fitting door, door sprung forward and came back and hit left wrist. States HX: Ganglion cyst left wrist. Cyst palpated radial aspect left wrist. Ice pack applied x 20 min, ES APAP 1000 mg po given, wrist support given. Instructed to rto pm. Evis Noel-Samuel,RN.

12/22/2003	09:56a	OCCINC	*Occupational Incident Pain R Elbow	Rennings, Heidi
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12-22-03 EE c/o Pain in Right Elbow. Wears support. Type one door fitter. Uses rachet to alppy door. Ice applied to right elbow. EE takes Benacor for pain 2 x a day. returned to work. D. Kondzielawa,RN/HRenningRN

01/30/2004	11:43a	OCCINC	*Occupational Inc- R Elbow.	Shrewsbury, Jennifer
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EE revisits for R elbow pain. States has been treating with Dr. Bandera. Rec'd a cortisone injection the week of 1/6/03-(not sure of date.) Ice x 15 min. Apap given. Has a f/u appt. with Dr. Bandera on 2/12/04. Advised to RTO PRN. J Dubbs RN

01/30/2004	11:43a	OCCINC	*Occupational Inc- L Wrist	Shrewsbury, Jennifer
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Revisit for Lump L wrist. States lump has not decreased any in size since last visit. Has intermittent pain. PMH of ganglion which was drained. Requests wrist support. Given. J Dubbs RN

02/16/2004	08:40a	OCCINC	ERROR In Chart	Rennings, Heidi
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02-16-04 EE reports with metal slag in arm. States on tightening exhaust muffler today at Col C-6, was tightening muffler and scraped right FA against metal, breaking off piece of slag which penetrated FA. Small area noted ulnar aspect of volar wrist. Explored with needle. Small piece of metal removed. Cleansed with NSS. Polysporin/DSD. RTO if Swelling/Redness/Drainage occurs. H Rennings RN

PLEASE DISREGARD ABOVE ENTRY, WRONG EE. H RENNINGS RN

02/16/2004	08:50a	OCCINC	*Occu-Right Elbow	Rennings, Heidi
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02-16-04 EE reports for right elbow pain. States saw Dr Bandera on Thursday, will start PT 2-3 times per week. Just wanted on record. Has not filed WC claim at this time. Referred to Disabilities Manager. H Rennings RN

CHRYSLER 077

A262

Encounters For An Individual Employee

11/01/2007

Page: 3

Name SMILEY, DAVID A.
 EIN 241681
 Department B.I.W.
 Period to 11/01/2007

Date	Time	Type	Description	Examiner
02/17/2004	01:30p	OCCINC	*Occ Incident- Revisit Rt Elbow.	Noel, Evis

2/17/03. EE revisit for rt elbow pain. States filed WC claim on 2/16/04 and has claim # for P.T., but cancelled P.T. on 2/16/04 due to misinformation received from numerous people related to WC process to be treated with P.T.
 Ice pack applied x 20 min and process explained to EE - WC is for bill payment and not necessarily to be oow and until WC claim is approved, bills will be paid by BC/BS. EE understood instructions. States will call to reschedule P.T. Evis Noel-Samuel, RN

04/22/2004	01:20p	OCCINC	*Occupational Incident- R Elbow	Shrewsbury, Jennifer
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Job: Door fitter- R side. Supervisor- Sean Hutton. Revisit for R elbow. Was out for PT- came back on 4/5/04. Is doing good. Has some mild pain today in R elbow. Requests ice and IB. Ice x 20 min. IB given. J Fowler RN

04/29/2004	10:00a	OCCINC	*Occupational Incident- R Elbow	Shrewsbury, Jennifer
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Revisit for R elbow. Was seen by Dr. Bandera yesterday. Is going to continue PT. Taking own Tylenol. Is currently working. To discuss with Dr. Horowitz. J Fowler RN

4/29/04

S: EE presents for f/u of R elbow tendonitis/lateral epicondylitis. EE is followed by his PMD, Dr. Bandera, who has EE going to PT 2x/week. EE notes some improvement in sx. EE reports he can do his job without restrictions because he was able to "modify" his tools which takes stress off his elbow. EE reports steroid injections by Dr. Bandera without relief.

O: No distress. Pos tenderness over lateral epicondyle which is exacerbated with pronation/supination of arm

A: Lateral epicondylitis

P: Continue tx with Dr. Bandera and his PT. RTC pm.

Jack Horowitz, M.D.

06/24/2004	09:35a	OCCINC	*Occ Incident- Revisit Rt Elbow Pain.	Noel, Evis
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6/24/04. EE revisit for rt elbow pain. Has f/u with Dr Bandera on 6/30/04. Attends P.T. 3 x/week.
 Mod amt swelling noted. Ice pack applied x 20 min, IB 2 tabs po given, Tennis elbow strap, Biofreeze to go. Evis Noel-Samuel, RN

07/06/2004	11:40a	OCCINC	*Occ Incident- Revisit Rt Elbow/lt Wris	Noel, Evis
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7/6/04. EE revisit for rt elbow and left wrist pain. States had a Cortisone injection in rt elbow on 6/30/04.

Sm amt swelling noted lateral aspect rt elbow.

Ice pack applied x 20 min, IB 2 tabs po, biofreeze to go. Evis Noel-Samuel, RN

11/03/2004	01:52p	OCCINC	Occ: R Elbow	Figueroa, Suzanne
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11/3/04 EE to medical per employment's request. Presents documentation on elbow. EE scheduled to be seen 11/10/04 @ 1:00PM. S. Figueroa RN

11/10/2004	01:08p	OCCINC	*Occupational Incident: RIGHT ELBOW	Sabo, Susan
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DR. SJ SABO

S-EE RTC FOR F/U FOR RIGHT ELBOW EPICONDYLITIS; HE HAS 16 YEARS OF SERVICE. HE LAST WORKED IN JULY OF 2004. HE HAS HAD TWO INJECTIONS INTO RIGHT ELBOW; LAST ONE WAS A FEW MONTHS AGO. HE HAS INTMT PARESTHESIAS IN FINGERS. HE HAD MRI OF RIGHT ELBOW ALSO; RESULTS ???.

O-PE: SLIGHT FULLNESS AT RIGHT EXTENSOR SIDE OF ELBOW WITH FULL ROM IN ALL DIRECTIONS. THERE WAS NO MAGNIFIED PAIN BEHAVIOR. TINEL'S SIGN IS NEGATIVE AT ELBOW. THERE IS NO MUSCLE ATROPHY OR CLICKING. NO GROSS TENDERNESS WAS NOTED.

DME WAS DONE IN 9/04. RESULTS RECOMMENDED RTWR. EE HAS FULL USE OF BOTH EXTREMITIES ON OBSERVATION.

A-CHRONIC RIGHT LATERAL EPICONDYLITIS.

P-RTWR AS PER DME; I AGREE WITH IT. EE IS PLANNING ON ATTENDING LAW SCHOOL IN THE NEAR FUTURE. DR.

BANDERA DOES KEEP HIM TOTALLY DISABLED.

DR. SJ SABO

02/14/2005	10:16a	OCCINC	*Occupational Incident - R Lateral Epic	Tinklepaugh, Carole
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EE is seen for follow up of a right lateral epicondylitis and left wrist pain attributed to a ganglion cyst. He states that his physician, Dr. Bandera, has injected the right elbow three times, last time was in 11/04, and two or three times he has had the left wrist injected. Currently, he is taking Ibuprofen and a medicated patch on his right elbow.

PMH. Borderline blood pressure and cholesterol. He has, to date, been unable to get into law school. He was not accepted at either Widner or Temple. He is considering going back to school for a masters' degree - perhaps in IT.

O. NAD Alert and oriented x 3. FROM right elbow. Some prominence of the lateral epicondyle. Non tender. Left wrist. Nontender. No appreciable swelling. Strength UEs: 5/5. Reflexes UEs: 1+ and symmetric.

A. Right lateral Epicondylitis - advised to wear forearm splint.

P. May return to work with a 15 pound lifting restriction on the right. Carole N. Tinklepaugh, M.D.

02/15/2005	07:31p	OCCINC	*Occupational Incident- R ELBOW	Knight, Mary
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2-15-05

S. EE TO MEDICAL REQUESTING ICE TO KNOWN INJURY OF RT. ELBOW. PAIN TODAY IS 5/10. TOOK IBUPROFEN EARLIER

Encounters For An Individual Employee

11/01/2007

Page: 4

Name SMILEY, DAVID A.
EIN 241681
Department B.I.W.
Period to 11/01/2007

Date	Time	Type	Description	Examiner
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TODAY.
O NO SWELLING NOTED
A. PAIN RT. ELBOW
P ICE APPLIED X 20 MIN RTW WITH PQX MARY KNIGHT, RN

04/26/2006	02:23p	ADMIN	Administrative Encounter	McElroy, Catherine
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4/26/06 Requested by Dan Mykelenko to review job placemnt made by previous OSHA nurse B-38 left side fender install. Advised that this job is an appropriate placement for EE's restrictions no repetitive twisting of wrist,elbow & No lifting over 15 lb w/ right hand. Note part weighs under 15 lb.
Cathy McElroy,RN

A264**CHRYSLER 079**

B-11 Trolley Square
Wilmington, DE 19806

CLINICAL NOTE

Patient's Name: David Smiley
Date of re-eval: July 12, 2004

He had to go to Occupational Health Service to have his arm iced down due to increased swelling.

He has increased pain/swelling at the extensor/flexor elbow with associated tenderness and Grade I reduction of strength.

As such, we are taking him out of work currently and getting him into more intense therapy with medication support. RTC approximately 3-4 weeks.

Peter B. Bandera, M.D.

A265

09/30/2004 07:17 FAX

JEFF MEYERS MD & ASSOC

SMILEY, David
9/16/04

Jeffrey S. Meyers, M.D. & Associates, P.A.

Board Certified in Physical Medicine & Rehabilitation

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EXPERT MEDICAL EXAMINATION

September 16, 2004

Ms. Barbara Eichelberger
ESIS
Integrated Health
P.O. Box 5001
Southfield, MI 48086

RE: David Smiley 8/16/04
Date of Birth: 08/12/61
Date of Incident: 09/26/2003

SSN REDACTED

Dear Ms. Eichelberger:

At your request, I performed an expert medical examination on David Smiley in my office today. We held a discussion at the beginning of his appointment and Mr. Smiley understands that he was referred to me by ESIS in reference to the alleged incident at work on approximately September 26, 2003; that no patient/physician treatment relationship exists; that I would be obtaining a history, performing an examination, and reviewing medical records; and that a written report would be submitted to ESIS. Mr. Smiley presented for his evaluation alone today. The client provided records including physician evaluation and treatment notes, reports of diagnostic studies, therapy notes and administrative correspondence.

HISTORY (as reported by the examinee): David Smiley is a pleasant 43-year-old right-handed African-American man who states that he was in his usual state of health until approximately the end of September 2003 when he was at work for Daimler Chrysler performing "right side door fit" and began to notice pain over his right elbow area. He reported the symptoms to the on-site medical unit where he presented with complaints of significant right lateral elbow pain with swelling. He was treated conservatively including use of medications and ice and returned to work. He continued to work at his job but his symptoms persisted with the onset of swelling that was unremitting, and he was subsequently seen by Peter Bandera, M.D. Dr. Bandera treated him with "cortisone injections" without relief of his symptoms and placed him in occupational therapy and gave him medications. Over time, his right elbow swelling decreased somewhat but due to continued symptoms he was placed on total temporary disability in March 2004 for a few weeks. He then returned to work but was again placed on total temporary disability on approximately July 9, 2004 due to worsening symptoms. He has remained out of work since that time. He reports his swelling has decreased since he has been off of work. He continues to undergo therapy in Dr. Bandera's office three times per week with mild relief of his symptoms but "no major change." He also reports some symptoms in his left wrist that developed around the same time as the elbow problem when he got his hand caught in a door. He was diagnosed with a "left thumb and wrist cyst" and was recently seen by Errol Ger, M.D. who drained the cyst in January 2004 without recurrence. He reports persistent symptoms in his right elbow and left wrist. He reports no bowel or bladder dysfunction, no progressive weakness, no progressive sensory loss. For exercise, he is in occupational therapy three times per week.

CONTRIBUTING PAST MEDICAL HISTORY: Notable for a broken great toe that required surgery.

A266

CHRYSLER 069

JEFF MEYERS MD & ASSOC

09/30/2004 07:18 FAX

SMILEY, David
9/16/04

PAIN LOCATION: His pain is focused over the right lateral elbow over the lateral epicondyle. His left wrist discomfort is over the base of the first metacarpal.

PAIN QUALITY/INTENSITY: His pains are of a burning quality and range from 2-5/10 on the VAS scale. The pains are constant and are worse with activity.

EXACERBATING FACTORS: Include supination and pronation of the forearm and forward flexing the right shoulder. He reports when his elbows are straight and he flexes his shoulders forward with pressure, he has to "shake (his) hands" to make the elbow pain go away.

RELIEVING FACTORS: Include avoiding activities that make his symptoms worse.

ALLERGIES: No known drug allergies.

CURRENT MEDICATIONS: Ibuprofen p.r.n.

PAST MEDICAL/SURGICAL HISTORY: Negative.

ROS: (N = Negative P = Positive)

CONSTITUTIONAL:

Weight change N Chills N Loss of Appetite N
Fatigue N Fever or night sweats N Night Pain N Sleep disturbance N

INTEGUMENT: N

LYMPHATIC:

Malignancy N Infection N Swollen Glands N

HEMATOPOIETIC SX:

Anemia N Bleeding N

ENDOCRINE SX:

Diabetes N Thyroid dysfunction N

EYES:

Visual loss N Inflammation N Diplopia N
Myopia N Hyperopia N Astigmatism N

MOUTH:

Pain N Ulcerations N

BONES, JOINTS, MUSCLES:

Pathologic fractures N
Peripheral or cervicothoracic joint symptoms N
Muscle pain P Right lateral elbow and left radial wrist.

BREASTS:

Pain N Lumps N Discharge N

RESPIRATORY:

Pain N SOB N Cough N

CV:

Chest pain N intermittent claudication N
Palpitations N Distal skin lesions N varicose veins N
Orthopnea N Edema N Dyspnea on exertion N

GI:

Dysphagia N Jaundice N Nausea N Reflux N
Change in bowel habits N Vomiting N Incontinence N
Constipation N Diarrhea N Ulcer/GERD N

GU:

Nocturia N Urinary frequency N Dysuria N
Retention N Hematuria N Incontinence N Pyuria N

GYN/SEXUAL BX:

Sexually active. Reports increased pain with sexual activity.

NERVOUS SX:

Cranial nerves N Convulsions N
Movement disorders N Coordination N
Anxiety/Depression N Headaches N

A267**CHRYSLER 070**

09/30/2004 07:18 FAX

JEFF MEYERS MD & ASSOC

SMILEY, David
9/16/04

FAMILY HISTORY:

The medical history of his biological father and mother are unknown.

PERSONAL/SOCIAL HISTORY: Mr. Smiley has been married for three years. He has two daughters aged 3 and 6 and in good health. Highest level of education is Bachelor's degree in paralegal studies.

Alcohol use: Two to three drinks per week

Illicit drugs: None.

Smoking: Approximately twenty pack-years at two thirds a pack per day.

Caffeine: Occasional.

FUNCTIONAL HISTORY: He is independent in ambulation and basic ADLs. He reports that since the incident at work, he does less work on his own vehicle and uses his left upper extremity more in order to protect the right. He has difficulty pulling the start cord on his lawn mower. He has difficulty opening bottles. He reports decreased grip strength on the right. He lives in a two-story townhouse with bedroom on the second floor.

WORK HISTORY: Mr. Smiley has been employed by Daimler Chrysler for over 15 years. For the last four years he has performed "right-side door fit." He works greater than 50 hours per week, all of which is standing or walking activities. All lifting is less than 10 pounds. His job involves frequent forward bending, pushing, and pulling as well as occasional kneeling, squatting and overhead reaching. His job involves getting the doors to fit securely on the Durango vehicle.

REVIEW OF RECORDS: I received the records, which you forwarded to me. These records included but were not necessarily limited to the following:

1. Treatment notes from the Daimler Chrysler on-site medical unit from approximately April 12, 2001 through August 2004 (mostly illegible). Documents treatment received at the onsite medical unit. Notes from approximately March 28, 2003 documents non-occupational injury involving the left wrist that is noted to be a ganglion cyst in approximately May 2003. On note of approximately September 25, 2003, it documents occupation related right elbow complaints that started about a month previously while performing his job. He continued treatment for right elbow symptoms through October 2003 and notes of that date noted pain with palpation over the lateral epicondyle, which was exacerbated with resisted extension of the right wrist. There was no pain over the right olecranon bursa. An assessment was right lateral epicondylitis. He continued treatment for his right elbow through December of 2003 and in January 2004 it was noted he was undergoing treatment with Dr. Bandera. He continued to have treatment for what was deemed an occupation-related complaint in his right elbow and notes from approximately June 2004 documented lateral epicondylitis as his diagnosis. Note of July 6, 2004 documents he presents for right elbow and left wrist pain and noted that he had a cortisone shot in the right elbow on June 30, 2004. It was noted there was small amount of swelling over the lateral aspect of the right elbow.
2. Treatment notes from the office of Peter Bandera including February 12, 2004, March 8, 2004, March 10, 2004, March 24, 2004, April 28, 2004, June 9, 2004, June 30, 2004, July 12, 2004, and August 16, 2004. Note from February 12, 2004 documents slight improvement of his right elbow with injection and he was continuing working, which was "obviously an ongoing stress." There was pain on stressing of the forearm flexors and extensors with ulnar notch tenderness and he was to participate in outpatient therapy with anti-inflammatories and defer impact forces to area. Note of March 8, 2004 documents he had complaints in the right elbow region for approximately six months, which he correlated with his work activities including using a torquing action with doors. He had been seen by the plant physician, and Dr. Sokoloff and was treated conservatively. It was noted that he had an overuse syndrome/medial - lateral tendonitis of the right elbow. It was noted subsequently that his treatment helped but when he returned to work he had exacerbation of his overuse syndrome/tendonitis relative to the right forearm. Note of March 24, 2004 documented he was taken out of work. Note of June 9, 2004 documented gross swelling over right elbow area and note of June 30, 2004 documented he was working 10 hours per day and continued to have considerable right elbow discomfort as his work was a persistent source of irritation. He again had a cortisone shot and note of July 12, 2004 documented that he would be on total disability again. Final note of August 16, 2004 noted swelling of the right elbow/forearm with associated tenderness. It noted a positive Tinel's sign over the right ulnar notch and some distal ulnar weakness by 1 grade and he continued to be diagnosed with an over-use syndrome with associated strain/sprain pattern and tendonitis.

10/05/04 11:47 FAX 888 244 6243

ERIS

006

005/008

05/30/2004 07:18 FAX

JEFF MEYERS MD & ASSOC

SMILEY, David

9/16/04

3. Report of EMG/nerve conduction study of the upper extremities by Dr. Bandera dated April 28, 2004. Documented Mr. Smiley went back to work on April 5, 2004 and he had positive Tinel's sign over the right ulnar notch and pain on stressing the forearm flexors and extensors with grade 1 weakness at the elbow. EMG/nerve conduction study noted mild to moderate ulnar nerve entrapment at the right elbow with a normal EMG component. There was a drop in conduction velocity over the elbow from above to below the right elbow. He was to continue outpatient therapy with medications and defer impact forces to his right elbow and wear an elbow pressure support.

PHYSICAL EXAMINATION:

BP: 125/88 Pulse: 72 Respiration: 16 Height: 5 feet 8 inches Weight: 173 pounds.

Constitutional: He is a well-developed, well-nourished African-American man in no acute distress.

HEENT EXAM: PERRL, BOML, oro-pharynx clear, face symmetric, tongue midline.

LUNGS: Clear to auscultation. No rales, wheezes or rhonchi.

HEART: Regular rate and rhythm with murmur present.

MUSCULOSKELETAL EXAM:

INTEGUMENTARY: No abnormalities.

INSPECTION: There was a well-healed scar over the right dorsum of great toe. There was a 1-cm raised area over the left radial wrist on the palmar side that appeared to be cystic. There was no swelling over the right elbow.

PALPATION EXAMINATION: Noted some tenderness to palpation over the right lateral epicondyle.

GIRTH: Upper arm girths were equal and symmetric bilaterally. Lower arm girths were 11 inches on the right and 10 inches on the left, circumferentially over the extended right elbow over the olecranon. Lower extremity girths were equal and symmetric bilaterally.

PULSES: 2+ bilateral radial and posterior tibial pulses. Skin pallor is normal, capillary refill is less than one second.

SPECIAL MANEUVERS:**CERVICAL**

Spurling

Root Tension

Percussion of neurovascular complex

In supraclavicular fossa

In medial upper arm

Tinel's at elbow

Tinel's at carpal tunnel

Tinel's at Guyon's canal

Phalen Test

Compression

Distraction

Finkelstein

LeftRight

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

Negative

SHOULDER/UPPER EXTREMITY

Neer's Impingement Test

Negative

Negative

Hawkin's Test

Negative

Negative

Yergason's Test

Negative

Negative

Speed's Test

Negative

Negative

"Load & Shift Test"

Negative

Negative

Apprehension Test

Negative

Negative

Sulcus Test

Negative

Negative

Winging

Negative

Negative

Finkelstein

Negative

Negative

GAIT EXAMINATION: He performed heel walk, toe walk, and tandem walk without difficulty. He performed full squat and 10 ankle pumps without difficulty. Static and dynamic balances are intact. Romberg is negative.

JEFF MEYERS MD & ASSOC

05/30/2004 07:18 FAX

SMILEY, David
9/16/04

NEUROLOGICAL EXAMINATION: Cranial nerves III-XII are intact. Sensory Examination: Light touch, pinprick, proprioception, and vibration were intact in the bilateral upper and lower extremities throughout. DTR/UMN: 2+ bilateral biceps, triceps, brachioradialis, Achilles and patellar reflexes. Babinski and Hoffman signs were absent. There was no clonus present. Coordination exam: Finger-to-nose, rapid-alternating movements, and heel-shin tests were normal.

NEUROPHYSIOLOGICAL REVIEW: There are new neurophysiological studies for review.
IMAGING REVIEW: There are no imaging studies for review.


IMPRESSION:

1. Right elbow pain. This condition appears to be related to the incident at work on approximately September 26, 2003. There is no evidence of neurologic deficit or radicular signs present. There was no evidence of structural damage attached to this condition and at today's visit there was no swelling over the right elbow. No imaging studies were available. EMG/nerve conduction performed in April 2004 noted mild ulnar nerve conduction deficits across the right elbow but neurological exam today was normal. Mr. Smiley continues to have complaints of discomfort of his right elbow and forearm that appear to be soft tissue in nature. He has undergone an aggressive treatment program including occupational therapy and further formal treatment is not warranted. At this time, I believe that his right lateral epicondylitis has stabilized and reached maximum medical improvement. No further workup is indicated. Treatment should be strictly conservative and home based. I suggest the use of over-the-counter anti-inflammatory and analgesic medications with training in a home-based exercise and stretching program that includes bilateral upper extremity stabilization. He should remain as active as possible and may return to work at a sedentary-light activity level for the right upper extremity with a 15 pound lifting restriction and avoiding repetitive flexion-extension with his right upper extremity at the elbow.

ANSWERS TO SPECIFIC QUESTIONS: I have attempted to answer the questions you have raised in your consultation request in the body of this report. In addition, I would like to state that Mr. Smiley's condition appears to be work related and has been documented as such since approximately September 2003. He is partially temporarily disabled and should have restrictions on repetitive flexion and extension of his right elbow and a 15 pound lifting restriction at this time. He has undergone an extensive treatment program including occupational therapy in Dr. Bandera's office and has maximized his benefit from that treatment.

The above analysis is based upon the history as provided by Mr. Smiley, findings on his examination, and the medical records reviewed. It is assumed that the material provided is correct. If more information becomes available at a later date, an additional report may be requested. Such information may or may not change the opinions rendered in this evaluation. The opinions I have expressed are based upon a reasonable medical probability and are totally independent of the requesting agent. Please do not hesitate to contact me, if you have further questions regarding this report.

Very truly yours,


Jeffrey S. Meyers, M.D.

CHRYSLER 073

A270

PHYSICAL MEDICINE &
REHABILITATION
BOARD CERTIFIED

PETER B. BANDERA, M.D.
Trauma and Rehabilitation Associates
Telephone: (302) 777-7723
Fax: (302) 777-3454

TROLLEY SQUARE
SUITE B-10
WILMINGTON, DE 19806

11-01-04

RE: David Smiley

DOI: 2-2-4

Claim #: 82701263652671

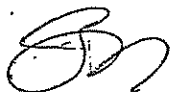
To Whom It May Concern:

David Smiley has been treating with our office since 3-8-04.

He has been disabled since 3-10-04 and continues current

disability. He is also still currently treating at our office.

He is getting therapy three times a week and follow-ups with the doctor every four weeks. His diagnosis directly related to this injury includes: Elbow Lat. Epic (tennis elbow) The DX code is 726.32. Any further questions please feel free to contact our office.



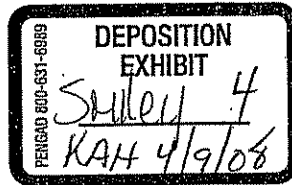
Peter B. Bandera, M.D.

A271

CHRYSLER 036

LDW - 2/8/04
[Signature]

DAIMLERCHRYSLER



DaimlerChrysler Corporation
Newark Assembly Plant

February 7, 2005

David Smiley
1956 Seneca Road
Wilmington, DE 19805

302 426-1681
0395

DCid #241681

Dear David Smiley,

A PQX placement search has been conducted and a job (Left Side Fender Install @ B38 9110/303) has been identified for you. Therefore, you are instructed to report to the Plant Employment Office on or before, Wednesday, February 9, 2005 for reinstatement.

If you do not report to the Plant Employment Office by Friday, February 11, 2005 or if you do not promptly notify the Plant Employment Office that for a reason beyond your control, which must be satisfactorily substantiated, you were unable to comply with these instructions, your seniority will be terminated.

When reporting to the Plant Employment Office, enter the building through the outside door at the south end of the administration building. The hours for inactive employees are as follows:

Monday through Friday

9:00 a.m. – 11:30 a.m.
and
1:30 p.m. – 3:00 p.m.

2/10/05

Respectfully,

Jennifer Asquith

Jennifer Asquith
Labor Relations
302-453-5018

B09
D06

A272

CHRYSLER 147

Medical Pass

EMPLOYEE INFORMATION

DATE: 02/14/2005 TIME: 10:05amName: SMILEY, DAVID A. SS#: REDACTED Dept: 9110 Zone/Group# NAShift: 1 Job Station / OPN No: NASeniority Date: 04/06/1989 How long on job? G. +10 Years In Dept Job Location: 4070

INJURY/ILLNESS TYPE

Occupational ☒
Non-Occupational ☐

Personal Protective

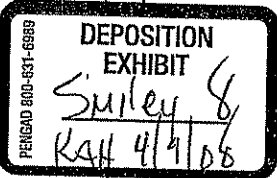
Equipment worn at time of
incident

REASON FOR REQUEST

*Re-Check

AFFECTED BODY PART

Elbow

Employee Signature: _____ Supervisor Signature: WEST, SHANNON

Supervisor Pager: _____

Payment Signature: _____ Phone#: 8585347 Radio Channel: _____

Completed By: _____ Title: _____

MEDICAL TREATMENT / INFORMATION..... (COMPLETED BY MEDICAL STAFF)

NATURE OF INJURY / ILLNESS: Lateral Epicondylitis Of Elbow RegionTime in: 10:16amTime out: 10:44amPQ ☐ PQX ☒ Temp ☐ Perm ☐OSHA Recordable Yes ☒ No ☐ Undetermined ☐

Detail of PQX

No Lifting Over 15# Right Hand

Expiration Date 05/04/2005 Re-Exam Date 05/04/2005Physician / Nurse Signature: Dr. Sinklepaugh / Em Date: 2/14/05

PLACEMENT STATUS..... (COMPLETED BY PLACEMENT COORDINATOR / SUPERVISOR)

- | | | |
|---|------------------------------|-----------------------------|
| 1. Did employee return to regular job? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 2. Alternative work found? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 3. Was employee sent to Area Manager? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 4. Was employee sent to Center Manager? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 5. Was employee sent to Plant Champion? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 6. Was employee sent home/no work? (HR) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |

New Job Title: _____ Department: _____ Operation: _____ Shift: _____

Placement Coordinator Signature: _____ Approved By: _____

COPIES TO:

MEDICAL

DISABILITY

SAFETY

SUPERVISOR

A273

CHRYSLER 149

Peter B. Bandera, M.D.
TROLLEY SQUARE, SUITE B-10
WILMINGTON, DE 19806

PHONE (302) 777-7723
FAX (302) 777-3454

DEA REG No. BB3216113

NAME Smiley AGE
ADDRESS DATE 2/23/05

B

Resume NO WORK

2/23 → 3/9/05

CALL IN # 2005 0621 48

REFILL TIMES

Substitution Permitted

In order for a brand name product to be dispensed, the prescriber must hand write 'Brand Necessary' or 'Brand Medically Necessary' in the space below.

Peter B. Bandera, M.D.
TROLLEY SQUARE, SUITE B-10
WILMINGTON, DE 19806

TELEPHONE (302) 777-7723
FAX (302) 777-3454

DEA REG No. BB3216113

NAME Smiley David AGE
ADDRESS DATE 3/9/05

Continue NO WORK

3/9 → 4/11/05

CALL IN # 2005 1105 67

11 MAR 05

REFILL TIMES

Substitution Permitted

In order for a brand name product to be dispensed, the prescriber must hand write 'Brand Necessary' or 'Brand Medically Necessary' in the space below.

Peter B. Bandera, M.D.
TROLLEY SQUARE, SUITE B-10
WILMINGTON, DE 19806

TELEPHONE (302) 777-7723
FAX (302) 777-3454

DEA REG No. BB3216113

NAME David Smiley AGE
ADDRESS DATE 4/6/05

B

Cont NO WORK

4/6 → 5/11/05

2005 152828

REFILL TIMES

Substitution Permitted

In order for a brand name product to be dispensed, the prescriber must hand write 'Brand Necessary' or 'Brand Medically Necessary' in the space below.

Peter B. Bandera, M.D.
TROLLEY SQUARE, SUITE B-10
WILMINGTON, DE 19806

TELEPHONE (302) 777-7723
FAX (302) 777-3454

DEA REG No. BB3216113

NAME David Smiley AGE
ADDRESS DATE 5/19/05

B

Cont NO WORK

5/19 → 6/15/05

on job

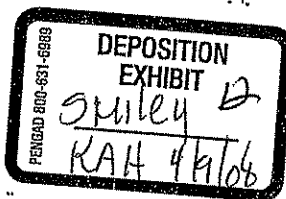
A274

CHRYSLER 102

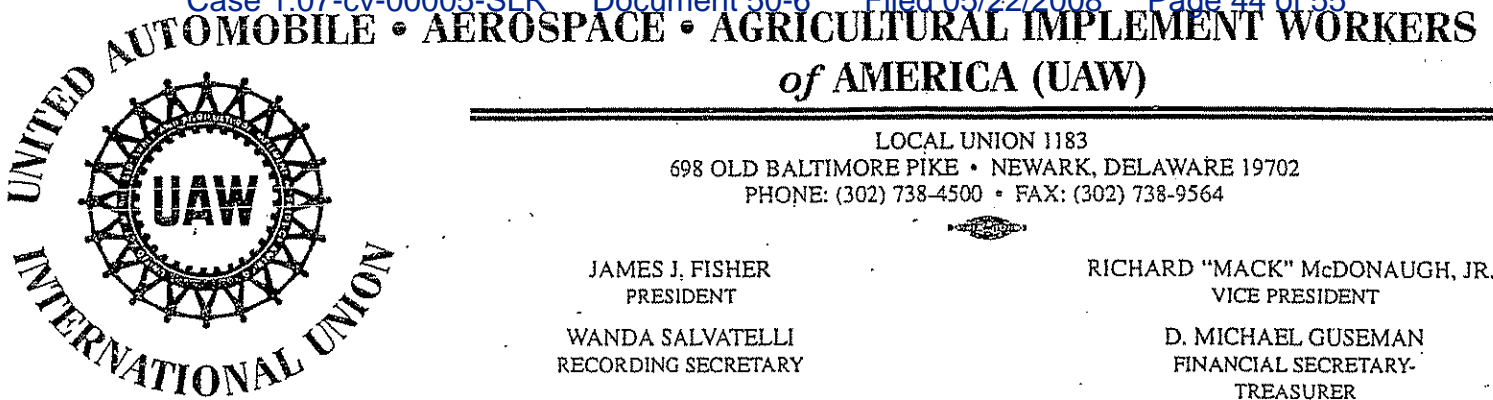
REFILL TIMES

Substitution Permitted

In order for a brand name product to be dispensed, the prescriber must hand write 'Brand Necessary' or 'Brand Medically Necessary' in the space below.



Call in Number
2005 198 978



LOCAL UNION 1183
698 OLD BALTIMORE PIKE • NEWARK, DELAWARE 19702
PHONE: (302) 738-4500 • FAX: (302) 738-9564

JAMES J. FISHER
PRESIDENT

WANDA SALVATELLI
RECORDING SECRETARY

RICHARD "MACK" McDONAUGH, JR.
VICE PRESIDENT

D. MICHAEL GUSEMAN
FINANCIAL SECRETARY-
TREASURER

April 3, 2006

Mr. David Smiley
1956 Seneca Road
Wilmington, Delaware 19805

Dear Brother Smiley,

It is critical that you contact me within five (5) days on receipt of this letter in reference to your continued employment at the Daimler Chrysler Assembly Plant in Newark, Delaware.

Per our conversation dated Monday February 13, 2006, I had informed you that the Union and Management had reached a comparable decision on your behalf for your reinstatement of employment.

Please contact me to address this issue @ 302-453-5596 or the Union Hall @ 302-738-4500 within the time period stated above.

In Solidarity,

A handwritten signature in cursive script, reading "John Mehalshick IV".

John Mehalshick IV
Committeeman District 1
UAW Local 1183

A276

CHRYSLER 096

Appointments

04/26/2006

Page: 1

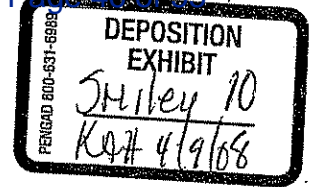
Name SMILEY, DAVID A.
EIN 241681
Department B.I.W.

Date	Time	Examiner	Description
11/10/2004	01:00pm	Figueroa, Suzanne	Elbow
02/14/2005	10:00am	McEwen, Elana	Elbow
05/04/2005	10:00am	McEwen, Elana	Elbow MISSED

A277

CHRYSLER 125

DAIMLERCHRYSLER



DaimlerChrysler Corporation
Newark Assembly Plant

May 6, 2005

David Smiley
1956 Seneca Road
Wilmington, DE 19805

DC id #:241681

Dear David Smiley,

According to our records, you were scheduled to report to the Plant Medical Department for a medical examination on May 4, 2005. You failed to report for this appointment. Accordingly, you are to report to the Plant Employment Office on or before May 13, 2005 to provide satisfactory evidence to substantiate your failure to report.

All absences between February 18, 2005 and the date you report to the Plant Employment Office must be substantiated.

If you do not report to the Plant Employment Office by May 13, 2005 and submit such evidence as directed above or if you do not promptly notify the Plant Employment Office that for a reason beyond your control, which must be satisfactorily substantiated, you were unable to comply with these instructions, your seniority will be terminated.

When reporting to the Plant Employment Office, enter the building through the outside door at the south end of the administration building. The hours for inactive employees are as follows:

Monday through Friday

9:00 a.m. – 11:30 a.m.

and

1:30 p.m. – 3:00 p.m.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon West".

Shannon West
Human Resources Generalist

SENT VIA OVERNIGHT MAIL

A278

CHRYSLER 101

ups **UPS Next Day Air®**
UPS Worldwide ExpressSM
Shipping Document

See instructions on back. Visit UPS.com or call 1-800-PICK-UPS® (800-742-5877) for additional information and Terms and Conditions.

TRACKING NUMBER 1Z F55 V82 22 1780 1126

1 SHIPMENT FROM

SHIPPER'S UPS ACCOUNT NO. **F55V82**

REFERENCE NUMBER

NAME **Shannon West** TELEPHONE **302-453-5347**

COMPANY

DAIMLER CHRYSLER NEWARK ASSY PLANT

STREET ADDRESS

550 SOUTH COLLEGE AVENUE

CITY AND STATE

NEWARK DE 19713

2 EXTREMELY URGENT DELIVERY TO

NAME **David Smiley** TELEPHONE

COMPANY

STREET ADDRESS

1956 Seneca Dr

CITY AND STATE (INCLUDE COUNTRY IF INTERNATIONAL)

Wilmington DE 19805

DEPT./FLR.

19805

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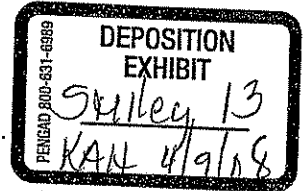
19805

3 WEIGHT	WEIGHT Enter "LTR" if Letter	DIMENSIONAL WEIGHT If Applicable	LARGE AIR PACKAGE	4 SHIPPER RELEASE
	LTR			
5 TYPE OF SERVICE	<input checked="" type="checkbox"/> NEXT DAY AIR	<input type="checkbox"/> EXPRESS (INTL)	CHARGES	
	FOR WORLDWIDE EXPRESS SHIPMENTS Mark an "X" in this box if shipment only contains documents of no commercial value.			
6	<input checked="" type="checkbox"/> SATURDAY PICKUP See instructions.	<input type="checkbox"/> SATURDAY DELIVERY See instructions.		
	DECLARED VALUE FOR CARRIAGE Contents are automatically protected up to \$100. For declared values over \$100, see instructions.			
7	<input type="checkbox"/> C.O.D. If C.O.D., enter amount to be collected and attach completed UPS C.O.D. tag to package.	\$		
	AMOUNT			
8	<input type="checkbox"/> An Additional Handling Charge applies for certain items. See instructions.	\$		
	AMOUNT			
9	RECEIVER'S/THIRD PARTY'S UPS ACCT. NO. OR MAJOR CREDIT CARD NO.			EXPIRATION DATE
	THIRD PARTY'S COMPANY NAME			
10	STREET ADDRESS			ZIP CODE
	CITY AND STATE			
11	SHIPPER'S SIGNATURE			DATE OF SHIPMENT
	5/6/05			
All shipments are subject to the terms contained in the UPS tariff and Terms and Conditions of Service, which are available at ups.com and local UPS offices.				UPS COPY

This form not needed with UPS Internet Shipping at UPS.com

A279

CHRYSLER 127



Substantiation
REINSTATEMENT DENIAL

Date May 13, 2008Time 10:12 a.m.Name David SmileyDCid# 241681

substantiation
You are being denied reinstatement from sick leave due to insufficient medical documentation. You have been told what information your documentation is missing (see below) and given a copy of the reinstatement requirements. Accordingly, you are to report to the plant personnel office by 3:00pm on 5/13/08 with a NEW doctor's note that meets ALL of the reinstatement requirements.

You were released to return to work by your treating physician on n/a.
You will be reinstated effective n/a, and will accumulate an excused tardy/absence for n/a. Extended coverage from your treating physician for n/a will not be accepted.

substantiated
However, if you do not provide the required reinstatement documentation as requested your seniority will be terminated.

Employee Signature _____ Date _____

HR Representative Dawn Ford Date 5/13/08

Comments: Your submitted documentation is missing the following:

☐ Letterhead w/physician's name & phone# ☐ Date statement was written☒ Diagnosis or diagnostic code ☒ Statement of total disability☐ Physician's signature☒ Return to work date or estimated return to work date☐ Dates of treatment to include Start and End Dates of Medical Coverage☒ original notes

Personnel Office
Hours of Operation
(Inactive Employees)

9:00am-11:30am
and
1:30pm-3:00pm

A280

CHRYSLER 100

**DaimlerChrysler Corporation
Newark Assembly Plant
Personnel Office**

Memo

To: Labor Relations
From: Dawn Ford
CC: Dan Mykolenko
Todd Frohner
Date: May 13, 2005
Re: David Smiley

On May, 6, 2005, Mr. David Smiley was issued a substantiation letter to report to the personnel office for missing his medical appointment on May 4, 2005.

He reported to the personnel office on Friday, May 13, 2005 at 10:12 a.m. with all of the letters within the envelope. He presented copies of his doctors' notes to me and I asked him where the originals are. He responded that he didn't feel like caring all of the notes, so he copied them, but he has them at home and he can bring them back to the office. I had informed him that the notes did not meet the criteria for proper substantiation and that he needed to bring back notes that met the requirement. In addition, I also asked him why he missed his medical appointment. Mr. Smiley said that he was unaware of the medical appointment. Until he had received the note, he did not know that he had an appointment.

I asked him if he had contacted medical to reschedule an appointment, and he told me that that was why he came down here. I filled out the Substantiation Denial form and explained to him what he was missing and that he had until 3:00 pm today to present proper documentation or his seniority will be terminated. If he refused to sign, just write RTS and date. He said "its okay dear, you can do that, and pushed the paper back under the glass and claimed that he will be back.

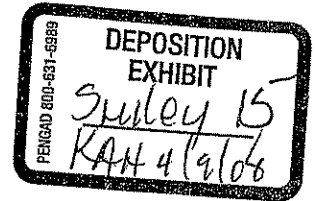
He came back with the same copied 4 notes around 11:40 a.m. and tried to present it to Angenella Fleming. Again she had explained to Mr. Smiley that she could not resolve this issue but she will give this form to me when I get back.

In addition, he was not given 24 hours due to fact that he already was given 5 days to report and presented the requirements to the personnel office. He was well aware of the procedures and he was taken advantage of them.

A281

CHRYSLER 099

DAIMLERCHRYSLER



DaimlerChrysler Corporation
Newark Assembly Plant

May 13, 2005

David Smiley
1956 Seneca Road
Wilmington, DE 19805

DC id # 241681

Dear David Smiley:

On May 13, 2005, you reported to the Plant Personnel office with medical documentation for the purpose of substantiating your absences. Your medical documentation was insufficient, and consequently, you were issued a "Substantiation Denial Form." You were instructed to obtain new medical documentation listing all (7) reinstatement and substantiation requirements, and report back on the next working day, May 13, 2005, by 3p.m.

As a result of your failure to report as instructed, your seniority was terminated effective May 13, 2005.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Dawn Ford'.

Dawn Ford
HR Generalist

SENT VIA CERTIFIED MAIL

A282

LOCAL NO. 1183	DISTRICT NO.	UNIT NO.	DATE	GRIEVANCE NO. 2005-146
-------------------	--------------	----------	------	---------------------------

PLANT	LOCATION CODE	GRIEVANCE CODE	FINAL DISPOSITION STEP	MO	DAY	YEAR	CLASS NUMBER
GRIEVANT- LAST NAME, INITIALS SMILEY, D.	DEPT. NUMBER 9110	CLOCK NO. 241681	SHIFT 2	AGREE SECTION	SUBSECTION	LOCAL AGREE	OTHER
SENIORITY (MO. / DAY / YR) 4/6/89	RATE 26.30	CLASS TITLE AND / OR NUMBER Assembler					
NATURE OF GRIEVANCE UN Just Discharge							
CONTRACT SECTION OR LOCAL AGREEMENT INVOLVED, IF ANY				Total grievants in this matter. (If more than one, list complete group on reverse)			
DISCUSSION 1	Date Held: numerous	Mgt. Rep. Name: J. ASQUITH	Union Rep. Name: J. Mahalick				
DISCUSSION 2	Date Held: numerous	Mgt. Rep. Name: S. HEITZMAN	Union Rep. Name: J. Mahalick				

STATEMENT OF GRIEVANCE (Include dates, times, parties involved, etc. If a claim of discrimination is alleged, written evidence setting forth facts must be attached.)

We the union charge management with the above violation on 5/13/05 employee D. Smiley was unjustly discharged.

ADJUSTMENT REQUESTED

We the union demand that this violation stop immediately and bring employee D. SMILEY back with a clear record and full pay.

(continue on reverse if necessary)

MANAGEMENT'S ANSWER (Include facts taken into account)

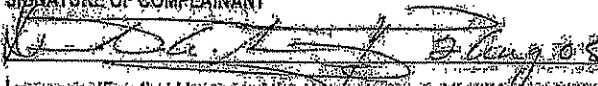
Management finds no violation in this instance employee Smiley reported to plant personnel in response to a letter from personnel to substantiate his absence. Employee Smiley responded but did not follow the proper procedures for substantiation. Employee Smiley was issued a substantiation denial form and awarded the opportunity to provide the necessary documentation. Employee Smiley failed to follow established procedures and was therefore separated by employment. This grievance and its demands are denied.

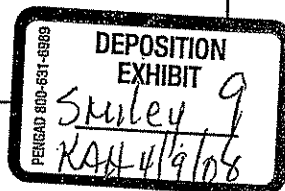
A283

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(continue on reverse if necessary)

SIGNATURE	GRIEVANCE PRESENTED BY UNION REP. John Mahalick IV	DATE 5/18/05	SIGNATURE	GRIEVANCE RECEIVED BY MGT. REP. D	DATE 5/18/05
	ANSWER RECEIVED BY UNION REP. John Mahalick IV	DATE 5/20/05		ANSWER PRESENTED BY MGT. REP. S	DATE 5/20/05

CHARGE OF DISCRIMINATION		ENTER CHARGE NUMBER <input type="checkbox"/> FEPA 05070352W <input type="checkbox"/> EEOC 17CA500503	
This form is affected by the Privacy Act of 1974			
Delaware Department of Labor		and EEOC (if applicable)	
NAME (Indicate Mr., Mrs., Ms) David Smiley		HOME TELEPHONE NO. (Include Area Code) (302) 426-0395	
STREET ADDRESS 1956 Seneca Road		CITY, STATE AND ZIP CODE Wilmington DE 19805 NCC	
COUNTY			
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one, list below)			
NAME Daimler Chrysler Corporation		NO. OF EMPLOYEES OR MEMBERS 100+ TELEPHONE NUMBER (Incl. Area Code) (302) 453-5350	
STREET ADDRESS 550 South College Ave.		CITY, STATE AND ZIP CODE Newark, DE 19711	
NAME		TELEPHONE NUMBER (Include Area Code)	
STREET ADDRESS		CITY, STATE AND ZIP CODE	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> AGE <input type="checkbox"/> RETALIATION <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		DATE DISCRIMINATION TOOK PLACE EARLIEST 5/13/2005 LATEST 5/13/2005 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s))			
Jurisdiction: Charging Party worked for Respondent since 04/06/99, most recently as a Tech I Charging Party's protected class: Disability Adverse employment action: Denied Reasonable Accommodation, Terminated Brief statement of allegations: Charging Party alleges he was injured on the job and was considered and accepted initially for workman's compensation. At some point Charging Party was no longer eligible for workman's compensation and he ceased to receive these benefits. Charging Party alleges that he returned to work to perform an accommodated position but the assignment aggravated his impairment. It was at this time that it was determined that Charging Party would again go out of work on a medical leave. During this most recent medical leave Charging Party had a number of medical appointments with both Respondent's physician as well as his own, all of which he kept. During this time period Charging Party alleges that Respondent failed to provide him with another position which would be an accommodation so that he could return to work. Respondent stated that Charging Party failed to make one of the scheduled medical appointments and therefore was terminated. Charging Party alleges that Respondent terminated his employment because of his disability. Respondent's explanation: Missed a medical appointment and failure to return to work Applicable law(s): Americans with Disabilities Act and the Delaware Handicapped Persons Employment Protection Act Comparator(s) or other specific reason(s) for alleging discrimination: None Additional information and verification of these facts are provided by the attached Verification.			
<input checked="" type="checkbox"/> I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		SIGNATURE OF COMPLAINANT  I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	



STATE OF DELAWARE
DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS – DISCRIMINATION PROGRAM

Dávid Smiley
1956 Seneca Road
Wilmington, DE 19805

Case No. 05080352W

vs.

DAIMLER CHRYSLER CORPORATION
550 S. College Ave.,
Newark, DE 19711

FINAL DETERMINATION AND RIGHT TO SUE NOTICE

Pursuant to 19 Del. C. § 710, *et seq.*, the parties in the above-captioned matter are hereby Noticed of the Department's Final Determination and Right to Sue Notice, as follows:

No-Cause Determination and Dismissal with Corresponding Right to Sue Notice.

In this case, the Department has completed its investigation and found that there is no reasonable cause to believe that an unlawful employment practice has occurred. The Department hereby issues a No-Cause Determination and Dismissal and provides the Charging Party with a Delaware Right to Sue Notice.

This No Cause determination is based on the following facts:

In this discrimination case, Charging Party must demonstrate that he has a disability and that he informed Respondent of this disability. Charging Party must also show that Respondent was aware of his disability and need for an accommodation and failed to grant the accommodation regardless. Charging Party must further show that Respondent failed to accept his medical documentation to substantiate his medical leave and rather terminated his employment because of his disability. Charging Party can show this by demonstrating that he advised Respondent of his disability and requested an accommodation which was denied and resulted in Charging Party having to take a medical leave. He can show this by demonstrating that he was treated more harshly and the policies regarding medical leave were applied more harshly towards Charging Party because of his disability. The evidence and information provided during the investigation revealed that Respondent did provide accommodations to Charging Party's disability but that even with the accommodations Charging Party was unable to perform the essential functions of his position. The evidence and information further indicates that because of this inability, Charging Party was placed on an approved medical leave. The evidence demonstrates that Charging Party had been on medical leave more than once during his tenure with Respondent and was well versed in the policies and knew what was expected of him to remain on medical leave. Finally, the evidence and information provided demonstrates that Charging Party failed to adhere to policies surrounding a continued approved medical leave and therefore his employment was ended. Charging Party's witnesses failed to corroborate his allegations and he did not provide any supportive documentation to demonstrate disability discrimination. Therefore, Charging Party has failed to establish illegal disability discrimination occurred.

See the attached Notice of Rights.

This Final Determination is hereby issued on behalf of the Department of Labor, Division of Industrial Affairs, Discrimination Program.

Date issued, 5/31/08

For JKC, Thora D. Smith
Julie Klein Cutler, Administrator

Delaware Department of Labor, Division of Industrial Affairs, 4425 N. Market St., Wilmington, DE 19802

NOTICE OF DELAWARE RIGHTS

The Department of Labor Discrimination Unit provides the following excerpt from 19 Del. C. § 710, et seq. as information regarding the Delaware Right to Sue Notice. If you need legal advice, please seek your own legal counsel.

§ 714. Civil action by the Charging Party; Delaware Right to Sue Notice; election of remedies.

(a) A Charging Party may file a civil action in Superior Court, after exhausting the administrative remedies provided herein and receipt of a Delaware Right to Sue Notice acknowledging same.

(b) The Delaware Right to Sue Notice shall include authorization for the Charging Party to bring a civil action under this Chapter in Superior Court by instituting suit within ninety (90) days of its receipt or within ninety (90) days of receipt of a Federal Right to Sue Notice, whichever is later.

(c) The Charging Party shall elect a Delaware or federal forum to prosecute the employment discrimination cause of action so as to avoid unnecessary costs, delays and duplicative litigation. A Charging Party is barred by this election of remedies from filing cases in both Superior Court and the federal forum. If the Charging Party files in Superior Court and in a federal forum, the Respondent may file an application to dismiss the Superior Court action under this election of remedies provision.

NOTICE OF FEDERAL RIGHTS

1. If your case was also filed under federal law and resulted in a "No Cause" finding, you have additional appeal rights with the Equal Employment Opportunity Commission. Under Section 1601.76 of EEOC's regulations, you are entitled to request that EEOC perform a Substantial Weight Review of the DDOL's final finding. To obtain this review, you must request it by writing to EEOC within **15 days of your receipt** of DDOL's final finding in your case. Otherwise, EEOC will generally adopt the DDOL's findings.

2. If your case was also filed under federal law, you have the right to request a federal Right to Sue Notice from the EEOC. To obtain such a federal Right to Sue Notice, you must make a written request directly to EEOC at the address shown below. Upon its receipt, EEOC will issue you a Notice of Right to Sue and you will have ninety (90) days to file suit. The issuance of a Notice of Right to Sue will normally result in EEOC terminating all further processing.

3. Requests to the EEOC should be sent to:

Equal Employment Opportunity Commission
The Bourse, Suite 400
21 S. Fifth Street
Philadelphia, PA 19106-2515

Delaware Department of Labor, Division of Industrial Affairs, 4425 N. Market St., Wilmington, DE 19802

17C_DDOL_C-13 Notice of Rights_DOC : 3/06

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EEOC Form 161 (3/98)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: David Smiley
1956 Seneca Road
Wilmington, DE 19805

From: Philadelphia District Office - 530
21 South 5th Street
Suite 400
Philadelphia, PA 19106



On behalf of person(s) aggrieved whose identity is

CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

17C-2005-00503

Charles Brown, III,
State & Local Coordinator

(215) 440-2842

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans with Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.



While reasonable efforts were made to locate you, we were not able to do so.



You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS** of your receipt of this Notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

On behalf of the Commission
Marie M. Tomasso

Enclosure(s)

Marie M. Tomasso,
District Director

October 4, 2006

(Date Mailed)

cc: DAIMLER CHRYSLER CORP
Lori Otis, EEO Consultant
Corporate Diversity Office
1000 Chrysler Drive
Auburn Hills, MI 48326

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